The Solicitors' Journal

VOL. LXXXII. **Saturday, June 25, 1938.** No. 26

Editorial, Publishing and Advertisement Offices: 29–31, Breams Buildings, London, E.C.4. Telephone: Holborn 1853.
SUBSCRIPTIONS: Orders may be sent to any newsagent in town or country, or, if preferred, direct to the above address.
Annual Subscription: £2 12s., *post free*, payable yearly, half-yearly, or quarterly, in advance. *Single Copy:* 1s. 1d. *post free.*
CONTRIBUTIONS: Contributions are cordially invited, and must be accompanied by the name and address of the author (not necessarily for publication) and be addressed to The Editor at the above address.
ADVERTISEMENTS: Advertisements must be received not later than 1 p.m. Thursday, and be addressed to The Manager at the above address.

Current Topics.

The Law Society Council's Report.

THE contents of the annual report of the Council of The Law Society are indicated at some length on pp. 527 to 531 of the present issue. It will therefore be sufficient if brief attention is drawn here to some of the features of particular interest. Among matters dealt with are proposals that facilities should be given for civil work at the Autumn Assizes generally, and that all District Registries should have unlimited jurisdiction to deal with divorce petitions and that such petitions should be triable at all Assize towns. On the latter point an interview was obtained with Sir BOYD MERRIMAN, P., and Sir CLAUD SCHUSTER to enable the Council to indicate its views, and the matter was fully discussed. In the course of a communication to the Chancellor of the Exchequer the Council made reference to the reopening of closed transactions in connection with the retrospective provisions contained in cls. 18–20 of the Finance Bill, 1938, dealing with the taxation of proceeds of sale of coupons and funding loans, and urged that retrospective legislation would make a dangerous precedent and cause more evil than it would cure. The report also draws attention to the joint letter addressed by the General Council of the Bar and The Law Society to the Ministry of Transport urging that the right of audience before Road Traffic Tribunals should be restricted to members of the legal profession and, in certain cases, to officials of recognised trade unions, and to the reply received in answer to that communication. Among other matters dealt with, mention may be made of the new retainer rules and of the memorandum addressed to the Lord Chancellor on the subject of solicitors' costs in the Court of Appeal. In regard to these and a number of further important topics, readers must be referred to the account of the report already alluded to. Meanwhile, in view of the great benefits derived by the solicitors' branch of the legal profession from The Law Society, it is satisfactory to be able to record that the total membership, now 11,124, is once again the highest in the Society's history. The number of members who joined during the year was 578, as compared with 474 in the previous year, at the end of which the total was 10,908—the highest figure which had been recorded up to that time. The general meeting of members will be held on 8th July. This year the provincial meeting opens at Manchester on 26th September.

The Royal Academy and the Law.

IN the Royal Academy Summer Exhibition, Mr. FREDERICK ELWELL, A.R.A., has followed up the remarkable success which, as we noted, he gained last year for his "County Court, Beverley," with an equally interesting, but larger and more important, picture of "The Police Court, Beverley." The average police court, apart from its humanity, is hardly an attractive subject for an artist, but Beverley is fortunate in possessing a fine old court room with a beautifully moulded ceiling. This time the aspect is looking down the court from behind the bench on which the chairman—or is it a stipendiary?—sits, at any rate, no other magistrate is visible. The case is apparently a serious one, possibly conspiracy of some kind, as four prisoners occupy the dock, guarded by a policeman. A woman is in the witness box, being examined by a solicitor or counsel (unrobed). On the left sit a couple of police officers with stonily impassive faces, on the opposite side is a box occupied by representatives of the press, while the benches at the back are filled with members of the public interested in the case. We would invite Mr. ELWELL to leave his home at Beverley for a time and do a really good picture of a High Court of Justice. There is a picture of the "Court for Crown Cases Reserved" in what was lately the Bar Room, but it is simply a group of judges of that court conferring with each other, and does not compare with work such as Mr. ELWELL'S. Elsewhere in the Academy may be noted good portraits of LORD RUSSELL OF KILLOWEN, by Mr. R. G. EVES, A.R.A.; Sir JOHN SIMON as Chancellor of the Exchequer, by Mr. GERALD KELLY, A.R.A., and Sir HOLMAN GREGORY, K.C., as Recorder of London, by Mr. HAROLD SPEED. In Mr. FRANK SALISBURY'S magnificent picture of the Coronation, a whole series of portraits includes that of the Lord Chancellor, the effect of whose coronet, superimposed as it is on a full-bottomed wig, has rather an extravagant appearance. The only uncovered heads are those of the Bishops, who should have assumed their mitres in that part of the ceremony.

The Lord Chancellor's Ecclesiastical Patronage.

A YEAR or two ago VISCOUNT HAILSHAM, who then filled the office of Lord Chancellor, in his presidential address to the members of the Holdsworth Club of the Law Faculty at Birmingham University, gave a vivid account of the multifarious duties that fall to be discharged by the occupant of the Woolsack. Among those mentioned, and once again we are reminded of it by an announcement in *The Times* of last week, is that of presenting clergymen to certain vacant livings throughout the country. This apparently dates from the reign of HENRY VIII when a book called "Liber Regis" was compiled in which all those Crown livings which were then of the value of £20 or less, and of which there would appear to be some 600 in number, were to be filled on the nomination of the Lord Chancellor. As someone has said, there is something peculiarly English or illogical in this arrangement, but like a good many other illogicalities to be found in the English Constitution it works fairly well, although this does not mean that in every case the appointee meets with the universal acceptance of the parishioners to whom he has been sent. Is it not on record that after the exercise of the patronage in one case a letter was received by the Lord Chancellor in which the writer, an old lady, complained that "we looked for a Cedar of Lebanon, and you have sent us a cabbage"! One who many years ago filled the office of Ecclesiastical Secretary to the Lord Chancellor said that at one time the notion that politics played a part in these appointments was common, as was illustrated in a letter he received from a candidate for a vacant living in which he stated that his "strenuous efforts in his Master's service did not prevent an unobtrusive devotion to the Conservative Club twice a week in the evenings." Others seeking appointment sought to gain the heart of the Secretary by presents of game: indeed, one postulant who did this mentioned in an accompanying letter that it was a good year for pheasants in his part of the country, but, as the Secretary noted with no little amusement, the donor had omitted to remove the label of the London poulterer who had supplied the carcases.

Supreme Court of Judicature (Amendment) (No. 2) Bill.

ATTENTION should be drawn to the changes it is proposed to effect by the Supreme Court of Judicature (Amendment) (No. 2) Bill. Provision is made for the appointment of three additional judges of the Court of Appeal by the raising of the number of ordinary judges from five to eight, but the judges appointed after the Bill comes into force, other than *ex-officio* judges, are under the terms of the measure to sit and act in any Division of the High Court when requested to do so by the Lord Chancellor with the concurrence of the presiding judge of the division. As members of the Privy Council, the Lords Justices appointed under the foregoing provision will be eligible to serve also upon the Judicial Committee when additional judicial assistance is needed. The Bill also provides that if after the occurrence at any time of a vacancy among the puisne judges attached to the Chancery Division the number of those judges amounts to five, the vacancy shall not be filled unless and until the Lord Chancellor, with the concurrence of the Treasury advises the Crown that the state of business in that division requires that the vacancy should be filled. The foregoing changes are the subject of amendments it is proposed to introduce into the Supreme Court of Judicature (Consolidation) Act, 1925.

The Limitation Bill, 1938.

THE attention of readers should be drawn to the Limitation Bill which has been introduced in the House of Lords by the Lord Chancellor. The object of the measure is "to consolidate with amendments certain enactments relating to the limitation of actions and arbitrations." It is unnecessary to enlarge upon the difficulty and complexity of the branch of the law with which the measure is concerned, nor need it be stated that the subject is unsuitable for treatment here. The matter will shortly be dealt with in this Journal, and meanwhile the scope of the Bill may be briefly indicated. Part I specifies periods of limitation for different classes of action. Clauses 2 and 3 relate to actions of tort and contract; cls. 4–17 to actions to recover land, advowsons and rent; cl. 18 to actions to recover money secured by a mortgage or charge or to recover the proceeds of sale of land; cls. 19 and 20 to actions in respect of trust property or the personal estate of deceased persons. The provisions of Part I are to have effect subject to the provisions of Part II (cls. 22–26), which provide for the extension of the periods of limitation in the case of disability, acknowledgment, part payment, fraud and mistake. Part III (cls. 27–34) is general. Clause 27 deals with the application of the measure and other limitation enactments to arbitrations. Clause 28 provides that any claim by way of set-off and counter-claim shall be deemed to be a separate action and to have been commenced on the same date as the action in which the set-off or counter-claim is pleaded. Clause 29 preserves equitable jurisdiction to refuse relief on the ground of acquiescence or otherwise. The next clause, concerned with the application of the measure to the Crown and the Duke of Cornwall, is followed by an interpretation clause and a saving clause for other limitation enactments. Clause 34 contains provisions as to actions already barred and pending actions, while under the final clause provision is made for the coming into operation of the proposed Act on 1st January, 1940.

A Rural Housing Manual.

THE importance of meeting the housing needs of the rural population without doing violence to the traditional aspect of the country side is fortunately becoming more fully realised, and while neglect of or indifference to this factor has been responsible for much irremediable harm, it is not yet too late to save much of the country from virtual ruin. The recently-published Rural Housing Manual should be of considerable assistance to the local authorities as a guide in preparing plans for new houses, particularly in rural areas. Issued by the Ministry of Health, the manual has been prepared with the assistance of a special sub-committee of the Central Housing Advisory Committee under the chairmanship of LORD CRAWFORD, and deals with the site lay-out, planning and selection of materials of new houses, and with the various aspects of the reconditioning of existing cottages. Plans and elevations, intended to illustrate the possibilities of obtaining certain standards of accommodation within given limits of cost and size, and photographs, both of old country cottages in the traditional styles and of well-designed houses built in recent years by various local authorities, are a valuable feature of the work. Special emphasis is laid on the need for ensuring that houses, whether new or reconditioned, should harmonise with the traditional style of cottage architecture in the particular district, and attention is drawn not only to the importance of simplicity and good proportion in general design, but also to the necessity of carefully selecting roofing materials of a colour which does not clash with that of other houses in the locality, and to the use of colour washed walls to secure harmony between the old and the new. The advantages of obtaining technical advice in connection with building schemes undertaken by local authorities are also duly emphasised. The Manual is published by H.M. Stationery Office (price 1s. 6d. net), and it may be hoped that its use will not be confined to the local authorities for which it is primarily intended.

The Regulation of Cyclists.

WHATEVER views may be entertained concerning the recommendations contained in the recently issued report of the Transport Advisory Council on the subject of cyclists, there can be little room for difference of opinion on the

soundness of two general propositions. The council strongly deprecates the recriminations which it finds occur between certain inconsiderate sections of the cycling and motoring interests and expresses itself as satisfied that more respect for and understanding of each other's point of view would lead each class of road user to show that increased consideration on the road which, it is said, lies at the root of the problem of road safety. The resentment caused by the thrusting motorist or by other road users anxious to assert what they consider, not always erroneously, to be their rights only too often engenders a disposition inconsistent with sound driving practice, and must have been the remote, and of its nature unrecorded, cause of many accidents. The second proposition which should receive wide approbation is the desirability of segregating traffic moving at widely varying speeds. "We are convinced," the report states, "of the importance, from the point of view of reducing accidents, of providing separate tracks for classes of vehicles whose speeds differ considerably." Segregation of fast and comparatively slow moving motor traffic is in practice effected to a considerable extent by the modern four-lane highway with undoubted advantages to all concerned, and it seems to us that the further application of this principle should prove an important factor in road safety. The desirability of an ample provision of footpaths and cycle tracks appears to be thus clearly indicated. They should, however, be adequate. Pedestrians in the past have frequently been blamed for using the roadway when the path provided for them has been of the roughest character, and cyclists can hardly be expected to use an inadequate track if the road presents greater attractions. The Traffic Advisory Council was impressed with the extent to which cycle tracks are provided on the Continent and with the fact that cyclists are required to use them. It accordingly recommends that cycle tracks should be provided on both sides of new main roads, but only where it is practicable to construct a reasonably continuous and properly surfaced track of adequate width. If such conditions are duly complied with, much of the difficulty at present experienced in inducing cyclists to use the tracks should disappear.

Rear Lights.

THE council was unable to agree on the question whether it should be made a statutory obligation on cyclists to carry a primary rear light. A minority report, signed by eleven members, considers that the onus should rest on the driver of an overtaking vehicle of providing sufficient light to distinguish the vehicles or persons he overtakes. The majority report, signed by thirty members, adverts to the reduction of the effectiveness of reflectors occasioned by the dipping of car headlights. The opinion is expressed that, when considering the cost and inconvenience to the cyclist of providing a rear light, weight must also be given to the uncertainty and nerve strain to all users of the highway created by the presence of large numbers of cyclists showing no light to the rear, and the conclusion is reached that the value to all of a rear light on cycles is so great as to outweigh the consideration of trouble and cost to the cyclist. Other recommendations of the council which should be shortly noted are that two efficient brakes should be provided on free-wheel machines, and at least one on fixed gear machines; that cyclists should be prohibited from riding more than two abreast except when overtaking, and that they should be required to carry identity discs and be placed under the same obligation as motorists to report accidents. On the other hand, no action is recommended as to the fixing of an age limit for cyclists; nor are riding tests or a system of third party insurance advocated.

Honours and Dignities: Fees.

SEVERAL interesting recommendations are made in the recently issued final report of the Committee on Fees and Duties payable to public funds on the grant of honours and dignities, which sat under the chairmanship of Sir CLAUD SCHUSTER. In connection with the advocated abolition of existing charges on appointment or promotion by letters patent or warrant to offices under the Crown, the committee intimates that it sees no reason why the Chancellor of the Exchequer or the Postmaster-General should be required to pay charges to the Exchequer simply because the appointments are made by letters patent. Other appointments are made by handing over the seals of offices, and no charges are payable, and the committee regards the charges it is proposed to abolish as a survival of the past, and as no longer appropriate in modern conditions. On the other hand, the committee recommends the continuation, in the aggregate at their present level, of the charges made on the grant of special privileges by the Crown which partake of the nature of licences to practice. These relate to licences to practice by King's Counsel or Welsh district notaries. It is also recommended that charges should continue to be made on the grant by the Crown of certain honorific privileges and the like—such as a change of name or a grant of arms to individuals, or the grant of a charter or supplemental charter to public bodies, but that these should be less than at present by the amount of the existing stamp duty. The committee does not, however, favour the abolition of the stamp duty of £30, payable on the grant of degrees by the Archbishop of Canterbury. These, the committee understands, are granted by the Archbishop either in recognition of special services to religion, science or the arts, or on the occasion of an appointment to high ecclesiastical office, and the grant of such honorary degrees is considered to be in quite a different category from the grant of honours and dignities by the Crown. The report, which contains legislative proposals to bring the recommendations into effect, is published by H.M. Stationary Office (Cmd. 5767, price 6d. net). It will be remembered that in an interim report the committee recommended the abolition of the fees and stamp duties payable to public funds on the creation of peerages and baronetcies and the conferment of knighthoods.

Recent Decisions.

IN *The Arantzazu Mendi* (*The Times*, 18th June), BUCKNILL, J., ordered that a writ issued by the Republican Government of Spain and a warrant of arrest to have possession of the steamship "Arantzazu Mendi" be set aside as impleading a foreign sovereign state. The vessel was in possession of the Nationalist Government of Spain by its duly authorised agents and, in light of the contents of the reply to the letter sent by the Registrar to the Foreign Office at the instigation of the court, the learned judge held that the Nationalist Government of Spain was for the purposes of the case a foreign sovereign state by the law of this country. See *The Cristina*, 82 SOL. J. 253; *Banco de Bilbao* v. *Rey*, 82 SOL. J. 254.

In *Knight* v. *Sampson* (*The Times*, 18th June) WROTTESLEY, J., held that one who was not presenting to the driver of a vehicle the "appearance of a person going to cross the road" but whose "demeanour deceived her into thinking that he had no intention of crossing the road at all," was not entitled to recover against the owner damages for injuries received by being knocked down by the car on a pedestrian crossing. *Bailey* v. *Geddes*, 81 SOL. J. 684, and *Chisholm* v. *London Passenger Transport Board*, 82 SOL. J. 396, distinguished.

In *Universal Art, Incorporated* v. *De Basil* (*The Times*, 22nd June), MORTON, J., granted, on motion, an injunction restraining the defendant, his servants and agents, from producing, performing, or in any way dealing with certain ballets, the subject of an agreement whereby, as the plaintiffs alleged, the defendant had assigned his rights to them. The defendant said that he was no longer seeking to do anything which the plaintiffs sought to restrain him from doing, and the learned judge doubted whether the injunction would do the plaintiffs any good. The plaintiffs' claim for rectification or recission of the agreement could not, it was intimated, be dealt with on motion.

Criminal Law and Practice.

DEPOSITIONS AGAIN.

In a previous article on this subject (81 Sol. J., 560) the writer drew attention to the undesirability of a too frequent use of s. 13 of the Criminal Justice Act, 1925. The section provides, it will be remembered, that where a person charged with an indictable offence is committed for trial and the justices decide that a witness's presence at the trial is unnecessary owing to something in a statement by the accused, or owing to a plea of guilty, or owing to the evidence being merely formal, they must bind him over conditionally on notice being given to him to attend the trial, and not otherwise. Subsection (3) provides for the reading of a witness's deposition without further proof at the trial either for the offence for which the prisoner is committed or any other offence arising out of the transaction, provided (*inter alia*) that the witness was one whose attendance at the trial is stated to be unnecessary in accordance with the provisions of the section, and that the deposition is proved to have been properly taken and is signed by the justice before whom it was taken.

It will also be remembered that the article dealt with certain observations by the Lord Chief Justice who had characterised " conditional binding over " as a most objectionable practice and had added : " One of these days when the reform of the criminal law has gone far enough, all criminal trials will, no doubt, be conducted by affidavit."

The question of the use of the section was recently before the Court of Criminal Appeal (*R.* v. *Collins*, 82 Sol. J. 436). The appellant had been convicted and sentenced at quarter sessions for housebreaking. When charged before the justices he said " I reserve my defence," but on being asked if he wished to call any witnesses, he replied : " I do not want to cause any unnecessary trouble and it will be unnecessary for the witnesses to appear, as I plead guilty to the charge." The justices accordingly bound over the witnesses for the prosecution conditionally in accordance with the section. At quarter sessions the accused pleaded not guilty and asked for an adjournment to prove an alibi. This was refused, and after the reading of the depositions and a short summing up the jury found the accused guilty.

It was argued for the appellant that he had not pleaded guilty unambiguously before the magistrates as he had said : " I reserve my defence." In the course of his judgment Mr. Justice Humphreys said that those words generally meant nothing and that there was an unequivocal plea of guilty. What was done was not contrary to the Act, and therefore the conviction could not be quashed on that ground alone, but, as the summing up was quite inadequate, the conviction was quashed.

The court, however, made some strong observations regarding the practice of conditional binding over. It was quite satisfied that such a course as was adopted in this case was not intended by the statute and could never have been contemplated by Parliament. The result of the practice was to deprive the jury of the inestimable advantage of the opportunity of not only seeing the witnesses who gave evidence and hearing what they had to say, but also observing their demeanour in the witness-box and of themselves exercising the right, if they chose, of asking the witnesses questions and further, of hearing the witnesses cross-examined by the accused, if he so desired. In another case, the court said, it may well happen that if this procedure is allowed, an accused may himself go into the witness-box and call witnesses, and the jury will be in the difficult position of having to decide between the truth of written statements by persons they have never seen or heard and evidence given in the witness-box. It was never contemplated by the Act that it should be used to abolish the ordinary method of trial by jury in such cases as this, its object merely being to save time and expense in cases where no possible injustice can be done to anybody.

To some extent the hardship occasioned by the section is mitigated by the fact that under sub-s. (2) the prosecutor or the person committed may give notice of his desire that a witness who is conditionally bound over should attend, and the examining justices, on committing a person for trial, must inform him of his right to require the attendance at the trial of any witness so bound over and of the steps which he must take for the purpose of enforcing such attendance. It is quite clear, however, that if the defendant is denied an adjournment, his right to require the attendance of a witness who is conditionally bound over may disappear if he decides to require his attendance when it is too late to send out the proper notice. An adjournment is highly desirable in such cases, as the court point out in *R.* v. *Collins*, but in view of the facts that an adjournment is in the discretion of the court, and that what was done in *R.* v. *Collins* has now been held not to be contrary to the language of the Act, a short remedying statute is needed in order to remove an obvious injustice.

Restrictive Covenants as affecting Conveyancing.

[Contributed.]

It is not unusual, where restrictive covenants are exacted by a vendor from a purchaser, that such covenants are followed by a proviso declaring in effect that the liability of the purchaser and those claiming under him shall be limited to their respective periods of ownership. The form of such a covenant may be as follows : " The purchaser for himself and his successors in title owner or owners from time to time of the land hereby conveyed and every part thereof [to the intent that this covenant shall enure for the benefit of the vendor's adjoining land coloured —— on the plan hereto annexed and] with intent to bind the land hereby conveyed and every part thereof into whosesoever hands the same may come hereby covenants with the vendor to perform and observe the covenants and restrictive stipulations set forth in the Schedule hereto Provided that neither the purchaser nor his successors in title shall be personally liable in damages in respect of any breach of covenant occurring after he or they shall have parted with all interest in the said land or the part thereof in respect whereof such breach shall have occurred."

It is proposed to deal only with two matters arising out of such covenants.

(1) The proviso limiting liability.

(2) The passage in brackets.

If the writer's experience is any true guide it would seem that the significance and effect of these portions of the clause are appreciated only by a small percentage of practitioners.

1. The Proviso.

The proviso limiting liability can only be appropriate in *an original* covenant, and has no place whatever in a subsequent covenant by way of indemnity. Thus—A enters into a new restrictive covenant with X on the occasion of the purchase from X of a parcel of land. A then sells the land to B subject to that covenant. The form in which the covenant by B is to be couched depends upon the form of the covenant entered into by A with X :—

(*a*) If the covenant by A with X does not contain a proviso limiting the liability of A and his successors in title to their respective periods of ownership then it is clear that the purchaser should covenant with the vendor " with the object and intention of affording to the vendor his executors and administrators a full and sufficient indemnity in respect of " the said covenant " but not further or otherwise." This form of covenant was settled as being appropriate in *Re Poole & Clarke's Contract* [1904] 2 Ch. 173. Whilst

dealing with this point it may be suitable to remind the reader that we are dealing here only with cases in which the vendor requires only an indemnity. If he requires more it will be necessary for him to stipulate accordingly in the contract and the conveyance. This is made very clear by the case of *Reckitt* v. *Cody* [1920] 2 Ch. 452. The vendor holding certain land which was already subject to restrictive covenants conveyed a part of it to a purchaser who covenanted to perform and observe those covenants so far as they were subsisting. The purchaser's covenants were not expressed to be for the benefit of any adjoining land, and although the vendor in fact owned certain adjoining land, there was no definite evidence to show that it was the understanding between the purchaser and the vendor that the covenant should be taken as a new covenant for the benefit of the land retained by the vendor. Accordingly it was held that the purchaser's covenant, though not so limited in form, was by way of indemnity only.

(*b*) If on the other hand, the original covenant by A contains a proviso limiting the liability of A and succeeding owners to their respective periods of ownership, there is no point whatever in exacting from a purchaser a covenant to perform the original covenants (with or without a similar proviso). As to the personal liability of the vendor, A, such liability automatically ceases by virtue of the proviso. The only other remedy which the covenantee can exercise is by way of injunction against succeeding owners or occupiers of the property.

Although the position as set out above is quite clear in law, the writer has found in practice that the position is not understood, and the following are the most frequent types of case occurring :—

(i) *Proviso limiting liability contained in original covenant.*

The vendor frequently stipulates for a covenant by the purchaser to perform the original covenants and to indemnify the vendor. Sometimes there is added to the new covenant a new proviso limiting the new purchaser's liability to the period of his ownership of the property—as if it were necessary to set up a complete chain of provisoes passing on from purchaser to purchaser. Now, there is not the slightest reason why such a covenant or proviso should be inserted unless the vendor retains adjoining land and desires to impose on the purchaser the covenants which he has himself undertaken to observe. We are not, however, considering such cases at this stage ; but are assuming that the vendor merely wishes to be protected against liability after he has parted with the land and the original proviso does this for him. All that the vendor can reasonably require is that the property should be conveyed subject to the covenants contained in the original conveyance.

Sometimes a wrong practice has already been followed, e.g., original covenant by A with X with proviso limiting liability as above. A has since sold the land to B, and B has covenanted with A (by way of indemnity) to perform the covenants, with a similar proviso. On the sale by B to C, the solicitor acting for C will often require a similar covenant. Generally a similar proviso limiting liability is offered if objection is raised to the giving of such a covenant. The fact is that there is no point in such a covenant. The covenant in the conveyance to B should have been omitted. A cannot enforce the covenant as to user (as he has an indemnity only). He cannot require any indemnity against damages, as his personal liability is extinguished by virtue of the proviso. There is, therefore, no need for any covenant in the conveyance to C. The land should simply be conveyed to C subject to the covenants.

(ii) *No proviso limiting liability in original covenant.*

Another misunderstanding frequently arises where the original covenant contains no proviso limiting liability to ownership. In such cases the purchaser's solicitor when inserting the covenant as to performance of the original covenants adds a proviso limiting the purchaser's liability to the period of his ownership of the land. This again is entirely wrong. If the original covenantor is responsible in damages after he has parted with the land he and his estate will remain so liable notwithstanding the conveyance of the land. If the indemnity is to be of any value it cannot, therefore, be so limited that the purchaser upon conveying away the property (perhaps on the following day), will escape all liability. It must be remembered that in so far as any question of liability in damages *can* arise the only chain of indemnity is that created by the string of covenants given by successive purchasers. If A is liable to X upon an original covenant with X, and does not cease to be liable upon parting with the land, he can hardly be content with a covenant from B on the basis that B's liability ceases immediately he parts with the land (possibly on the following day). The result would be that B's successor would be under no liability to indemnify A, and as A is the only person whom the covenantee, X *could* sue, A would be left to bear the burden of the liability alone if sued after B had parted with the land. If the original covenant does not contain any proviso limiting the covenantor's liability the covenants by subsequent purchasers should therefore also be unqualified, except that it will be by way of indemnity only unless the vendor retains part of the burdened land and wishes to be able to enforce the covenant for the benefit of the land retained. In that case he must make it clear that the covenant taken is by way of a separate covenant with him for the benefit of the land retained, *Reckitt* v. *Cody*, *supra*.

Whilst dealing with the question of damages it is convenient to point out that in practice it will often be found that the original covenant refers to a schedule of stipulations, some of which contain some genuine restrictive covenants (which can run with the land), and some positive, such as obligations to erect fences or walls (which cannot so run). Where such positive obligations exist practitioners should be careful not to permit the original covenant to contain a proviso limiting liability, for the reasons given above.

As to the remedy by way of injunction, this remedy, which is available against all owners or *occupiers* with notice of the covenant (unless void against them for non-registration under the Land Charges Act, 1925), it should be noted that as the court enforces restrictive covenants by injunction, proceedings for enforcement of such covenants can only be taken against the original covenantor or the actual persons in physical occupation of the property ; *Hall* v. *Ewin* (1887), 37 Ch. D. 74.

II. Definition of Land Benefited.

It will be seen that in the standard form of covenant set out above the land intended to be benefited is defined by the passage in brackets. If it was not already clear from older decisions, such as *Renals* v. *Cowlishaw* (1879), 9 Ch. D. 125, and *Torbay Hotel Ltd.* v. *Jenkins* [1927] 2 Ch. 225, that it is essential to show that the understanding of the parties was that a certain ascertainable area of land was to be benefited by the covenant this is brought out very clearly by the recent case of *Re Ballard's Conveyance* [1937] Ch. 473. This case not only draws attention to the necessity of showing what land is benefited but also emphasises the point that if any land is in fact to benefit from the covenant it must be sufficiently near to the burdened land to be *capable of benefiting* from the covenant. In the case now under consideration certain covenants were taken purportedly for the benefit of a very large estate. It was pointed out by Clauson, J., in the course of his judgment, that as the breach of the covenant could not materially affect parts of the estate which were very distant from the burdened land, the benefit of the covenant could not run with the whole estate. He further held that it was not possible to treat the benefit of the covenant

as attaching to such part of the estate as might reasonably benefit from it, because this would not be in accordance with the earlier authorities, establishing that the land benefited must be capable of definite ascertainment by definition or from the surrounding circumstances. It will be necessary in the concluding portion of this article to refer again to this decision, which was considered by the Court of Appeal in *Zetland* v. *Driver* (1938), 82 SOL. J. 293, where the means of defining the land benefited was special.

Unless care is taken not only to mention the parcel of land which is to be benefited, but also to confine that parcel within proper limits, the burden of the covenant may not run with the servient land. In other words, unless the whole of the land purported to be benefited by the covenant is in fact sufficiently close to the burdened land to be capable of being affected by a breach of the covenant then subsequent owners of the burdened land may take free from the covenant. It is, therefore, surprising to find that the practice of defining the land intended to be benefited is rather the exception than the rule. It is no exaggeration to say that in the writer's experience not more than two conveyances out of ten contain any definition whatever of the land intended to be benefited.

It is felt that practitioners cannot, in the past, have realised the unfortunate results which may ensue from this omission, or in some cases, from the failure to confine the benefit of the covenant to land capable of being benefited. Possibly the lessons taught by these new cases may have the result of improving matters in this respect.

Quite apart from the points made above, unless the benefited land is clearly defined in the conveyance in which the covenant occurs, it may be extremely difficult to determine to whom application should be made for a release of the covenants. The only solution in such cases may be an application under s. 84 of the Law of Property Act, 1925. The writer is aware of at least two cases in which the only reason for making such an application was that it was impossible to tell what neighbouring land, if any, was intended to take the benefit of the original restrictive covenants. It must not be forgotten that for the purpose of burdening the land sold and benefiting the land retained, it is not absolutely essential that the land retained should be shown on a plan or defined by measurement in the deed imposing the covenants. Thus, where it was stated that the covenants were taken for the benefit of " all or any of " the vendor's " lands adjoining or near to " the land conveyed, the covenant was held to be effective to attach the benefit thereof to the remainder of the vendor's land: *Rogers* v. *Hosegood* [1906] 2 Ch. 388. On the other hand, it will be seen from the decisions mentioned above, that if the area of the land retained is so extensive that the more distant parts cannot be materially affected by the user of the burdened land, the burden of the covenant may not run with the covenantor's land. Moreover, in cases in which this formula is used it must not be forgotten that if the land retained is being sold off in plots it may be extremely difficult, if not impossible, at a later date to determine what land was in fact retained by the vendor at the date of the conveyance. The moral is that care should be taken to define with exactitude the land intended to be benefited, either by a plan or an exact description, and to confine the land within an area capable of being benefited by the covenants. In the course of time judicial decisions may afford some guide to the area which is capable of being benefited in various types of case, but at present conveyancers may find considerable difficulty in advising upon this question. One very difficult type of case arises where A is the owner of, say, a shop or a theatre in one road and for valuable consideration obtains a covenant by the owner of a parcel of land a short distance away, say 300 yards distant from the shop or theatre in question, that such parcel shall not be used for the purposes of a shop of the same kind or (as the case may be) of a theatre. It is deducible from the authorities that the land benefited need not be actually adjoining, but it is clear that it must be near the burdened land. Since the old case of *Tulk* v. *Moxhay* speedy means of transport have, in a sense, reduced distances. It may therefore be that a broader interpretation of the requirement of proximity will be adopted. On the other hand, it is thought that the example given may be regarded by the courts as a case in which the doctrine of *Tulk* v. *Moxhay* cannot apply for the following reason. The covenant is not really taken for preserving the amenities or value of *land* but with the object of preserving the value of the goodwill of a *business*. This point may be better appreciated if the example given above is slightly changed. If the shop or theatre is half a mile (instead of 300 yards) distant from the land intended to be burdened the site of the shop or theatre can hardly be considered to be adjoining or neighbouring land within the scope of the ruling decisions; yet it might well be beneficial to the owner of the shop or theatre that the covenant should be taken in order to prevent competition, and thus to preserve the goodwill of the business, not only whilst it is owned by him, but also in the hands of any purchaser of the property and the business. Although *Tulk* v. *Moxhay* was decided in 1848, it is curious that nearly a century later it appears to be impossible to say whether land intended to be benefited must be actually " close " to the burdened land or, if not, on what principles the court will determine, in the type of case last mentioned, whether the covenant is within the doctrine of *Tulk* v. *Moxhay*. If that doctrine is, as has been said, an extension in equity of the doctrine of negative easements (see *L. & S.W. Rly.* v. *Gomm* (1882), 20 Ch. D. 562, per Jessel, M.R.), it is material to point out that at one time it was thought, in respect of rights of way, that contiguity to the dominant tenement was essential; but it has been laid down, by the Court of Appeal, that this view is incorrect, and that it is only necessary that the right of way should be beneficial in respect of the ownership of the land to which it is appurtenant (*Todrick* v. *Western National Omnibus Co. Ltd.* [1934] Ch. 561. Whether similar reasoning will prevail in the case above mentioned, or whether the courts will refuse to extend the doctrine, remains to be seen.

Since the above lines were penned the decision of Bennett, J., in the case of *Zetland* v. *Driver* (1937), 81 SOL. J. 669; 53 T.L.R. 996, has been overruled by the Court of Appeal: (1938), 82 SOL. J. 293; 54 T.L.R. 594. There certain restrictive covenants had been taken, for the benefit of the whole *or any part or parts* of the vendor's unsold property. On this ground the Court of Appeal considered that the case was distinguishable from *Re Ballard's Conveyance* [1937] Ch. 473; 81 SOL. J. 458, where the covenant was merely expressed to be for the benefit of the whole of the vendor's property. Whilst this rather elastic method of identifying the property benefited appears now to be sanctioned by the Court of Appeal, it was made clear by Farwell, J., who delivered the judgment of the court, that the principle that the land to be benefited must be ascertainable had not been overlooked. Whilst defining the conditions under which restrictive covenants can be made to run with the land he mentioned the following points:—

(i) " The land which is intended to be so benefited must be so defined as to be easily ascertainable, and the fact that the covenant is imposed for the benefit of that particular land should be stated on the conveyance and the persons or the class of persons entitled to enforce it.

(ii) " The land retained by the vendor must be such as to be capable of being benefited by the covenant at the time when it is imposed."

It is to be noted that the case of *Zetland* v. *Driver* is really very special, for the benefit of the covenant was not intended to pass to any purchaser on the absence of an express assignment, and all that can be said as to the effect of a sale of part of the property with an express assignment of the benefit

of the covenant is that the purchaser of such part could only enforce the covenant so long as some successor in title of the original covenantee retained part of the settled property for the benefit of which the covenant was originally taken, since the covenant prohibited, in effect, anything which, " in the opinion of " the original covenantee or his successors in title, amounted to a nuisance, and not merely anything which was, in fact, a nuisance. Whilst, therefore, this case may be regarded by some persons as affording a means of escape from the necessity of defining with precision the land to be benefited, it is submitted that the decision in fact emphasises the difficulties which may arise from the failure so to define the land.

The Solicitors Act (Northern Ireland), 1938.

A COMPREHENSIVE statute concerned with domestic matters incidental to the solicitors' profession has received the Royal Assent in the present session of the Parliament of Northern Ireland, and will come into operation on the 1st January of next year.

The profession in Ireland has been subject to regulation by charter and statute for a long period. A comparatively modern development was the charter granted to the attorneys and solicitors of Ireland in the year 1852. The modern title of " The Incorporated Law Society of Ireland " was introduced in 1888, and ten years later a general Act for the regulation of the profession—the Solicitors (Ireland) Act, 1898—was passed. In the year 1922, after a separate administration and a separate judiciary were constituted for Northern Ireland, the creation of a separate regulating body became inevitable. Fortunately, the nucleus of such a body was already in existence, in the form of the Northern Law Society—a society of solicitors of Antrim, Armagh, Down and Belfast, which had been incorporated under the Companies Act in the year 1911. Upon this foundation arose the Incorporated Law Society of Northern Ireland, which derives its powers and status from a charter granted by the Crown in 1922, upon petition by the practitioners in that area, and supplemented by a short Act of Parliament which applied the provisions of the Solicitors (Ireland) Act of 1898 to the new arrangements. The Society has a Council consisting of a president, two vice-presidents, and twenty-one ordinary members; one county delegate is appointed to represent each county in Northern Ireland (see 72 SOL. J. 669).

Comprehensive statutes have been passed in recent years for the governance of the profession both in England and in Scotland, and that legislation no doubt gave an impetus to the Northern Ireland Law Society in pressing for the enactment of similar legislation. A Bill was introduced in the Senate in June of last year, ably sponsored by Mr. J. G. LESLIE. Minor amendments were made in the Committee of that House, but owing to considerations of Parliamentary time the measure did not pass through the House of Commons. It was re-introduced in the present session—this time in the Commons, where it was in charge of Mr. MACDERMOTT, K.C. —passed by both Houses with but little criticism or opposition, and became law on 15th June, under the title of " The Solicitors Act (Northern Ireland), 1938."

Part I of the new Act relates to education and apprenticeship. As was pointed out by the Council of the Society in support of their proposals, " the rapid changes in method and scope of education for the learned professions demand the substitution of elasticity for rigidity." The Council had come to the conclusion that the existing legislation, which prescribed three examinations only (Preliminary, Intermediate and Final) for persons seeking to become solicitors, was too rigid and limited, and did not enable the Society to test in the fullest manner the suitability of candidates, in point of education and character, or to ascertain the progress made by them during apprenticeship under articles. Provision has therefore been made by Pt. I of the Act so as to place examinations, educational tests and qualifying standards under the immediate control of the governing body of the profession by virtue of regulations made by that body (with the assent of the Lord Chief Justice). Such regulations can be altered from time to time as occasion requires, instead of being " crystallised " in the Act of Parliament itself. The Act does, however, prescribe a " norm " in this matter, in that it requires (s. 1 (3)) that the regulations must, subject to prescribed exceptions, provide for the holding by the Society at least once in every year of—

(*a*) a preliminary examination, *i.e.*, an examination of persons seeking to be bound under indentures of apprenticeship to solicitors, and

(*b*) a final examination, *i.e.*, an examination of persons applying to be admitted and enrolled as solicitors.

A notable provision is that which enables regulations to be made for ascertaining the fitness and capacity of persons *seeking to be bound* under indentures of apprenticeship. Previously the Society did not possess power to prescribe any preparatory course to ensure that a person, before taking the step of being articled, should have an elementary conception of what his (or her) life's work is to be. What the Society has in mind is that the intending apprentice should take such a course of lectures as would give him a knowledge of legal concepts, and also enable him to form a judgment at the earliest possible stage as to the suitability of his choice of a profession. Regulations cannot, of course, affect heredity, family traditions and family businesses, but they should operate to advantage in saving here and there a square peg from insertion into a round hole. Due regard is paid by the Act to the recognition of periods spent, or examinations passed, at recognised universities in the United Kingdom and Eire, for the purpose of computing the term of apprenticeship, or dispensing from the preliminary examination. The universities to be recognised at the inception of the Act are specified in a schedule, which includes ten such institutions in England, four in Scotland, the University of Wales, and, in Ireland, the University of Dublin, the National University of Ireland and the Queen's University of Belfast.

Part II of the Act is concerned with the discipline of the profession. As regards an application to strike the name of a solicitor off the roll, it enacts a set of provisions which will take the place of those contained in the Solicitors (Ireland) Act of 1898. Under that Act, as applying in Northern Ireland, the preliminary investigation was entrusted to a disciplinary committee chosen from members of the Council of The Law Society by the Lord Chief Justice. The committee embodied their finding in a report to the Lord Chief Justice, with whom rested the actual determination of the application to strike a name off the roll. The committee could not do this themselves, nor had they power to censure a solicitor or impose upon him a fine, in the case of conduct which was reprehensible but not to such a degree as would justify the drastic punishment of striking off the roll or suspension from practice. In England, since the Act of 1919, the solicitors have in this matter had wider powers, and under the Act of 1932 at present in force the appropriate committee has power, " to make any such order as to removing from or striking off the roll the name of the solicitor . . . as to suspending him from practice, as to payment by any party of costs, and otherwise in relation to the case as they may think fit "—subject to an appeal to the High Court. The provisions of the Northern Ireland Act are not so wide, and they more nearly resemble the Scottish enactments. There is a discipline committee to whom complaints as to professional misconduct may be made. The committee hold an inquiry into the complaint and embody their finding in a report to

the Lord Chief Justice. If they find a solicitor to have been guilty in the matter of the complaint, but are of opinion that his conduct does not warrant his being struck off the roll or suspended from practice, they may, instead of setting down the report for hearing before the Lord Chief Justice with a view to the infliction of the major penalty, censure the solicitor, impose on him a fine up to £100, and order him to pay the costs of the application. A solicitor so dealt with has a right of appeal to the Chief Justice (ss. 18–21). The Act thus widens the functions of the disciplinary committee as compared with those given by the Irish Act of 1898, but the new powers are closer to the Scottish than to the English model.

Part III of the Act contains a group of enactments enabling the Council of the Society to make regulations as to the opening and keeping by solicitors of accounts at banks for clients' moneys, and of accounts containing particulars as to the receipt and payment of moneys on behalf of clients. Regulations may also be made for governing "professional practice conduct, and discipline" and empowering the Council to take action and collect evidence in order to ascertain whether their regulations are being complied with. Failure to comply with the regulations will render a solicitor liable to have a complaint made against him to the disciplinary committee. The object of these provisions is, of course, to secure the greatest degree of public confidence in the financial relations between practitioners and their clients. Bankers are not to be placed under any additional obligation to make enquiries in relation to the accounts to be kept under the regulations, nor can they have recourse to an account for clients' moneys in respect of the liability of a solicitor to the bank. This part of the Act introduces to Northern Ireland a system of regulation which has been set up in England under the Solicitors Act, 1933.

The regulating authority which the Northern Ireland Act gives to The Law Society, acting by their Council, is wide. At the same time the exercise of the power is placed under judicial supervision. Regulations must be sent to all the judges of the Supreme Court; if within twenty-eight days a majority of the judges (the Lord Chief Justice being one) signify their dissent in writing, the regulation is to have no effect; and if, after a regulation has come into force, a similar majority of the judges dissent, the regulation will cease to be of any force on the expiration of two months thereafter.

The Act contains various other provisions having as their object the maintenance of a high professional standard, whether in education or conduct. Upon these heads, it is only fair to say that the public in Northern Ireland has hitherto had little cause for complaint. There is no doubt that The Law Society will have the goodwill of the community when entering upon their new activities. In the world as it is, even the best of professions needs regulation, especially when that profession is indispensable. It is only the Utopian State, where there are but few laws, or none, that can "utterly exclude and bannyshe all proctours and sergeauntes at the lawe."

More about Pedestrian Crossings.

THE respective rights of motor drivers and pedestrians at pedestrian crossing places have recently received further clarification in the courts, notably by a decision of Wrottesley, J., in *Knight* v. *Sampson*, reported at p. 524 of this issue. The plaintiff, a pedestrian, came into collision with a car belonging to the defendant and driven on her behalf by a third person. The accident occurred on a pedestrian crossing, and Wrottesley, J., found that the driver never had an opportunity of seeing that the plaintiff intended to cross; that the plaintiff's demeanour deceived the driver into thinking that he (the plaintiff) had no intention of crossing the road at all; that the plaintiff stepped on to the crossing when the defendant's car was either just on the crossing or a few feet from it; and that "he was not presenting to the driver the appearance of a person going to cross the road." In a previous article (81 SOL. J. 601), it was attempted to show, in discussing *Bailey* v. *Geddes*, [1938] 1 K.B. 156; 81 Sol. J. 684, that it was a moot point under the regulations how late a pedestrian might leave it before stepping on to a pedestrian crossing in front of an approaching motor vehicle. In *Chisholm* v. *L.P.T.B.*, 54 T.L.R. 773; 82 SOL. J. 396, decided at the end of April, Hilbery, J., apparently took the view that *Bailey* v. *Geddes*, *supra*, has the effect of making irrelevant "any want of care on the part of the [plaintiff] pedestrian which might have prevented him from recovering at common law"; and he bases that view of the decision in that case on a passage from Slesser, L.J.'s, judgment ([1938] 1 K.B., at p. 166). Wrottesley, J., on the other hand, quoting a passage from the judgment of Greer, L.J., at p. 162, holds that it is still possible, notwithstanding the regulations, for a pedestrian to step on to a crossing in front of an approaching motor vehicle in such a way that his action virtually constitutes suicide, an expression which, it may be taken, the learned judge used in order to describe the extreme of negligence. In the earlier article above referred to, it was pointed out that the point of time at which he might safely, or without negligence, step on to a pedestrian crossing in front of an approaching car had to be decided by a pedestrian with regard to a variety of circumstances which he might not be qualified to judge accurately. The result of Wrottesley, J.'s, decision is to leave it still open to a defendant motor driver to establish that the pedestrian's act in crossing when he did was, in the circumstances, an act of such gross negligence as to relieve the driver of liability and blame. It must be borne in mind that in *Chisholm* v. *L.P.T.B.*, *supra*, Hilbery, J., held that the driver was in certain respects in default with regard to the regulations, whereas in *Knight* v. *Sampson*, Wrottesley, J., held the defendant to be not guilty of negligence. Accordingly, no question of *contributory* negligence in the plaintiff could there arise. Wrottesley, J.'s, decision therefore still leaves open the interesting question whether, given that the driver is guilty of some negligence, e.g., in approaching a crossing too fast, an act of "suicidal" contributory negligence on the part of the plaintiff pedestrian will enable the defendant to escape liability. It may be observed, incidentally, that the suggestion made in the earlier article that Regulation 4 of the Pedestrian Crossing Places (Traffic) Provisional Regulations, 1935, would be clearer if it read: "The driver . . . shall allow free and uninterrupted passage to any footpassenger who *is waiting to cross the carriageway* at such crossing" (the actual words are: "is on the carriageway"), receives confirmation in Wrottesley, J.'s, finding that the plaintiff was not presenting to the defendant the appearance of a person going to cross the road. He did not appear to be a person *waiting* to cross, and the driver was entitled to rely on that fact.

The importance of *Chisholm* v. *L.P.T.B.*, *supra*, lies less in the decision there on the question of the defendant's right to succeed on an issue of contributory negligence than in the fact that it gives an important ruling on a question relating to pedestrian crossings at those cross-roads at which traffic lights are in operation. Rule 3 of the Regulations of 1935 provides: "The driver of every vehicle approaching a crossing shall, unless he can see that there is no foot passenger thereon, proceed at such a speed as to be able if necessary to stop before reaching such crossing." By Regulation 5: "The driver of every vehicle at or approaching a crossing at a road intersection where traffic is for the time being controlled by a police constable or by light signals shall allow free and uninterrupted passage to any foot passenger who has started to go over the crossing before the driver receives a signal that he may proceed over the crossing." That regulation

applies to "controlled crossings," therefore, and it is at once apparent that the driver's obligations in the case of such a crossing are very different from, and less onerous than, the obligations imposed on him by Regulations 3 and 4, the former of which deals simply with "a crossing" and the latter of which clearly refers to "uncontrolled crossings." Hilbery, J., in effect, ruled that, when a vehicle, having been held up by the red signal at a pedestrian crossing at the entrance to a cross-roads, is then released by the green light at that crossing, and has accordingly passed over that crossing, any further crossing over which it has then to pass in order to leave the cross-roads, i.e., in order to enter any of the roads leading away from the cross-roads, is not necessarily a controlled crossing, but simply "a crossing," to which, accordingly, Regulation 3 applies. In *Chisholm* v. *L.P.T.B.*, *supra*, an omnibus travelling westward was held up by a red light at the foot of Ludgate Hill where it leads into Ludgate Circus. On being released by the turning of the light to green, the omnibus proceeded across Ludgate Circus (the "cross-roads") in order to enter Fleet Street. Where Fleet Street opens into Ludgate Circus there is likewise a pedestrian crossing. The omnibus collided with the plaintiff pedestrian at that crossing. Hilbery, J., held that the signal to proceed which the omnibus driver had received at the crossing at the entrance to Ludgate Circus from Ludgate Hill, and therefore Regulation 5, applied only to that particular crossing. The crossing at the junction of Fleet Street and Ludgate Circus, therefore, from the point of view of the driver about to enter Fleet Street, was simply "a crossing," the driver's duties accordingly being at that point regulated by the more stringent Regulation 3. Hilbery, J., observed that it would cause difficulty and danger if the operation of one signal (i.e., in this case at the foot of Ludgate Hill) were held to apply to all the crossing places at that cross-roads.

Hilbery, J.'s, decision, it may respectfully be said, tells motor drivers what their common-sense will readily accept. At the same time, it is easy to understand the advancing of a contention that a driver receiving a signal to proceed at the entrance to a cross-roads is really receiving a signal to pass over the whole cross-roads and on into the road along which his route lies. It is easy to understand a driver's thinking the same thing and acting accordingly.

That drivers were never intended to expect any such state of affairs seems apparent from the fact that not all cross-roads have the same arrangement of lights. At Ludgate Circus, the lights (the fact that they are operated by a policeman in a box is for the present purpose irrelevant) are situated at each entrance to the cross-roads, but pointing away from it: so that they only show to traffic before it reaches the cross-roads. Once a vehicle has passed, say, the crossing at the foot of Ludgate Hill and arrived in the Circus, no further light is visible to it. At Oxford Circus it is otherwise. For example, westbound traffic approaching Oxford Circus is held up or released at the eastern entrance to the Circus, not only by a light at that point, but also by a light pointing eastwards and placed at the western entrance of the Circus. In such a case, a driver is presumably entitled, on receiving the two green signals, to pass straight across Oxford Circus and on towards the west, with no obligation on him at the two pedestrian crossings, save that imposed by Regulation 5—namely, to give way to a pedestrian who had started to cross when he, the driver, received the green signal. Similar considerations may apply to "T" junctions. In every case a driver must take stock of the position and see how far a release signal carries him.

It is important to note that, in the case of a vehicle which proposes, after release, to turn to the left or right at a cross-roads, there is logically no difference between two cross-roads such as Ludgate Circus and Oxford Circus. In the former case, on turning right or left after release, the driver will see no light at the pedestrian crossing over which he is about to pass as he leaves the Circus. In the latter case he will, in fact, pass a *red* light at the corresponding point. Regulation 3 will, in accordance with Hilbery, J.'s, decision, it seems, be applicable in either case. It is therefore apparent that Regulation 3 may apply to a controlled or to an uncontrolled crossing as circumstances dictate; yet there is nothing in the wording of the regulation to suggest that, in its application to a controlled crossing, it applies to such a crossing only when a red light is showing there.

Chisholm v. *L.P.T.B.* and *Knight* v. *Sampson* do much in different ways to make the position with regard to pedestrian crossings, generally, clearer, but it is evident that there still remain inconsistencies to be resolved.

Food Manufacturers' Liability to Consumer.

THE decision in *Donoghue* v. *Stevenson* [1932] A.C. 562; 76 SOL. J. 396, was that a ginger beer manufacturer was liable in damages for negligence by reason of the presence of a snail in the bottle. The principle is applicable to all food cases, and the liability in tort is to the buyer direct, although there is no privity of contract between him (or her) and the manufacturer. The retailer can be sued for damages for breach of warranty, either jointly or without joining the manufacturer as a co-defendant. The cause of action against the manufacturer is based on negligence, and the mere presence of a foreign body is not sufficient to entitle the buyer to damages, as the doctrine of *res ipsa loquitur* is inapplicable. The scope of the above decision is illustrated in the following cases:

In *Samuels* v. *Green and H. Shieff, Ltd.*, at Manchester County Court, the claim was for £35 as damages for breach of warranty against the first defendant (at whose shop the plaintiff had bought a loaf of bread) and for negligence against the second defendants, who had baked the loaf. The plaintiff's case was that, while at breakfast, she had noticed something in a loaf of bread, from which she had eaten a slice. That which at first was taken to be a cockroach was found to be a fly, and the shock of the discovery gave rise to nervous dyspepsia, which caused the plaintiff to lose twelve weeks' wages at £2 a week. The first defendant's case was that the loaf was sold as supplied, and the second defendants' case was that, according to a microscopical examination, the fly must have been in the flour when mixed. His Honour Judge Leigh observed that, although the plaintiff had had attacks of vomiting, which she could not control at work, this did not prevent her from going to the theatre and the cinema. The business was also a family affair, and she had made no attempt to work for three months. In the absence of evidence of precautions, in order to exclude flies from their premises, the second defendants were liable. Judgment was given for the first defendant against the plaintiff, with costs, and for the plaintiff for £15 against the second defendants, with costs—including those payable to the first defendant.

In *Schessler and Collins* v. *The Granville Confectionery Company and Cadbury Brothers Ltd.*, at Clerkenwell County Court, the first plaintiff's case was that he had bought, at the shop of the first defendants, a block of Bournville chocolate, manufactured by the second defendants. A piece of the chocolate was given to the second plaintiff and another piece was chewed by the first plaintiff, who found that it contained a piece of metal. The fear that he might have swallowed a foreign body so upset the first plaintiff that he could not eat or sleep properly, and required medical attention for five or six weeks. The second plaintiff had a similar fear, and was X-rayed. In consequence of the inefficiency of her work, she was dismissed from her situation. The second defendants' case was that they had 50,000 moulds in use, and they were

inspected twice a week. In order to safeguard the public, the chocolate had been X-rayed, and the proportion of complaints of tinned steel fragments being found was 1 in every 10,000,000 blocks of chocolate sold. His Honour Judge Earengey held that the second plaintiff had not proved that it was a piece of metal embedded in the chocolate caught in her mouth. As regards the first plaintiff's claim against the second defendants, it could not be held that there was a duty upon them to warn the public against a 1 in 10,000,000 risk. Judgment was therefore given for the second defendants. The first defendants, however, were suppliers of foodstuffs, and they gave a warranty that the foodstuffs should be free from injurious content. The first plaintiff was, therefore, entitled to judgment for £10 10s. against the first defendants.

In *Barlow* v. *Woolridge and George Kemp Limited*, at the Liverpool Court of Passage, the plaintiff's case was that she had bought, at the shop of the first defendant, a biscuit manufactured by the second defendants. The biscuit contained a finger nail, and the plaintiff's medical evidence was that her throat had a septic condition, which was consistent with the finger nail (when half swallowed) having injured the lining. The plaintiff had managed to spit out the foreign body, but the incident set up tonsilitis, and her hair fell out. The second defendants' case was that the actual mixing of the dough was done by machinery and meticulous care was taken to ensure absolute cleanliness. It was contended that the plaintiff suffered no injury from the incident, apart from the momentary unpleasantness. The Assistant Presiding Judge (Mr. Fraser Harrison) held that the biscuit contained the finger nail and was not of merchantable quality. The plaintiff was therefore entitled to £22 as damages against the first defendant for breach of warranty and against the second defendants for negligence. Their factory, however, was run in a proper manner, and no one need fear to eat their goods. A stay of execution was granted. Compare a previous case, noted under the above title, in the "County Court Letter" in our issue of the 29th January, 1938 (82 Sol. J. 90).

Insanity and Divorce.

I.

Now that the first petitions brought under the Matrimonial Causes Act, 1937, on the ground of incurable insanity have been heard, several of the problems which have been causing much discussion and even anxiety among lawyers have been dealt with.

The most important question that has arisen has been the construction of the condition that the respondent "is incurably of unsound mind," especially since medical opinion has indicated a marked reluctance to find any insane person "incurable." It is now clear, however, that the court will not seek any positive and specific determination of incurability by a medical witness, but, applying ordinary common sense, will itself decide the issue. For instance, where the respondent had been detained since 1917, and was suffering from secondary dementia, the medical superintendent in charge of the respondent expressly maintained that he was not able to regard the respondent as incurable. In his opinion she was not "incurable" but "irrecoverable." The President, nevertheless, held that from the evidence it was clear and conclusive that the case was one of incurable secondary dementia and granted a decree. This case illustrates a general tendency on the part of medical witnesses to avoid any reference to incurability. In one case, it is true, a medical expert without hesitation pronounced a respondent "quite incurable" but, at least for some time, one must expect that an opinion of such certainty will remain exceptional. Thus in other cases in which decrees were granted the medical witnesses stated that "the prospects of recovery were very unfavourable," that "recovery was most unlikely" (although there "was just a possibility" of a return to a period of lucidity), that "the chances of spontaneous recovery were very improbable," and "I don't think that there is any prospect of recovery." In *Swettenham* v. *Swettenham*, the distinction between "incurable" and "irrecoverable" was discussed, but the President did not consider the distinction as one of any substance. "Incurable" was that which could not be cured and was incapable of being healed by medicine or medical skill; "irrecoverable" was being incapable of being restored to health; and "being restored to health" was itself a definition of "cure." It is sufficiently clear, therefore, that the disinclination of doctors to use the word "incurable" will not affect the operation of the Act. Indeed it appears that the court will find the respondent to be incurably of unsound mind if there is nothing to suggest that he falls within the very small group of recoverable cases and there is no evidence of any treatment which can be applied with any real prospects of inducing a recovery.

The amount of evidence required to satisfy the court will obviously depend upon the facts of each particular case, but, although it has often been observed by the critics of the Act that the evidence of a single medical man seems to be a very unsatisfactory way of determining whether a person should be divorced, nevertheless in some cases decrees were granted on the evidence of the petitioner and a medical superintendent alone. In these cases, however, the evidence was clear and conclusive, and it seems that in the normal case it will be advisable to call both the medical superintendent in charge of the respondent and an independent medical expert. The President, moreover, has pointed out that the court will expect the best possible evidence from the institution where the respondent is detained at the time of the hearing.

The vexed question of the degrees of insanity will not trouble the court. In *Swettenham* v. *Swettenham*, the President in giving judgment said that the court is not concerned with any question of the degree of the unsoundness of mind save in so far as that degree is indicative of incurability. It had been argued for the guardian *ad litem* that before a decree could be granted there must be such a degree of unsoundness of mind as to make married life intolerable, but the court declined to accept any such qualification and held that if the unsoundness of mind was established then the further issue was not its degree, but whether it was incurable.

Whether or not the degree of curability upon the reasonable expectation of which a respondent can be said to be curable will become of importance has not yet been decided. It was mentioned in *Swettenham* v. *Swettenham*, but as the court held that in that case there was in fact no prospect of any cure it was not necessary to determine the question. In many cases of maniac depressive insanity, for instance, the disease is cyclic and consequently although a patient may be expected to recover, that recovery, even though it may be of an appreciable duration, will not be permanent. If the medical evidence is that the respondent will recover but that a further relapse into insanity will follow, is the respondent then "incurably of unsound mind?" Does the possibility of a recovery even although only temporary take the case outside the statute? In the absence of any direction we hazard the opinion that the court will treat a respondent who has been under care and treatment for more than five years as incurable if there is but a mere possibility of temporary recovery. The provision governing care and treatment means that the scales of justice and mercy for five years are given to the insane person and, after that period has elapsed, the sympathy of the court ought to extend to the other party.

Company Law and Practice.

Expense of a Liquidation: The Remuneration of a Voluntary Liquidator.

I PROPOSE to consider this week one or two matters connected with the expenses of a liquidation. These expenses, as is well known, are paid by the liquidator out of the assets which come into his hands in that capacity, and one of the items which he will no doubt watch with the closest interest is his remuneration. If the liquidation of the company is proceeding by way of a members' voluntary winding up, then the usual course is for the members to fix the liquidator's remuneration at the general meeting at which he is appointed. This the members are empowered to do by s. 232 (1) of the Companies Act, 1929. If, on the other hand, the winding up is a creditors' voluntary winding up, then s. 241 of the same Act provides that the committee of inspection, or if there is to be no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators. In a recently reported case—*In re Mortimers (London) Ltd.* [1937] Ch. 289—the members of a company which was in voluntary liquidation had at a general meeting of the company fixed the remuneration of the liquidator at £550. Subsequently, an order was made for the compulsory winding up of the company and the Official Receiver was appointed liquidator. The question then arose as to how far the previous resolution of the company fixing the first liquidator's remuneration was open to review by the court. The Official Receiver contended that the voluntary liquidator should submit an account to be passed by the court and apply to the court to fix his remuneration. The voluntary liquidator contended that in a case—such as his—where there was no proof of fraud or mistake, the remuneration fixed in the voluntary liquidation could not be reviewed in a subsequent compulsory liquidation. This contention was based on s. 175 (1) of the Companies Act, 1929, which provides as follows:—

> "Where before the presentation of a petition for the winding up of a company by the court a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution and unless the court *on proof of fraud or mistake*, thinks fit otherwise to direct, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken."

This sub-section of the Act must, however, be read in conjunction with r. 192 (1) of the Companies (Winding Up) Rules, 1929. This rule, so far as is material for our present purposes, provides as follows:—

> "The assets of a company in a winding up by the court remaining after payment of the fees and expenses properly incurred in preserving, realising or getting in the assets, *including where the company has previously commenced to be wound up voluntarily, such remuneration, costs and expenses as the court may allow to a liquidator appointed in such voluntary winding up shall, subject to any order of the court* . . . be liable . . . " etc., etc.

Now at first sight it might appear that these two provisions are not capable of being completely reconciled. The latter appears to make a voluntary liquidator's remuneration a matter which the court may regulate in a compulsory winding up; the former appears to prescribe that such remuneration shall not be open to attack unless it is shown that there has been some fraud or mistake. If this is so, and if the two provisions are inconsistent, which is to be preferred? The view which was taken by Bennett, J., can best be explained in the words which that learned judge himself used at the end of his judgment in the case already referred to: "They [*sc.* the sub-section and the sub-rule] have to be read together and, so reading them, the language is in my judgment wide enough to enable the court, in any case where a voluntary liquidation has been superseded by a compulsory order, to review any remuneration which has been voted to the liquidator by the members, if it is a members' voluntary liquidation, or by the committee of inspection or the creditors, if it is a creditors' voluntary liquidation." The proper procedure when a liquidator appointed by the court wishes to have the remuneration voted to a voluntary predecessor reviewed by the court, is for the compulsory liquidator to take out a summons in the liquidation asking for an order fixing the amount of the remuneration payable to the voluntary liquidator. In *In re Mortimers (London) Ltd., supra*, Bennett, J., referred it to the registrar to fix the remuneration properly payable to the voluntary liquidator, and to order the voluntary liquidator to pay to the compulsory liquidator any amount by which the amount paid might be found to have exceeded the amount properly payable.

The Remuneration of a Solicitor-Liquidator.

I now pass to another recent decision of the same learned judge, which dealt with a somewhat similar problem. The remuneration which fell to be considered by the court in this case—*In re R. Gertzenstein Ltd.*, [1937] Ch. 115—was the remuneration properly payable to a liquidator who was at the same time a solicitor and acting as such. The facts were these. The company went into voluntary liquidation, and two liquidators were appointed, the one a chartered accountant and the other a solicitor. In the course of the winding up the liquidators took out an originating summons for the purpose of impeaching certain transactions to which the company had been a party on the grounds that they constituted a fraudulent preference. The solicitor-liquidator acted in the proceedings as solicitor for himself and his co-liquidator, and the matter was eventually compromised. The respondents to the summons undertook not to prove or make any other claim in the liquidation of the company, and they consented to an order directing them to pay a sum of money to the liquidators in settlement of the claim and also to pay the taxed costs of the liquidators of the summons. These costs were then brought in for taxation and were found to include the profit costs of the solicitor-liquidator. These were disallowed by the taxing master, and also on objection being taken by the registrar. The liquidators then appealed, and were again defeated, Bennett, J., being of the same opinion as the taxing master and the registrar. The learned judge's decision is based on r. 158 of the Companies (Winding Up) Rules, 1929, which provides as follows:—

> "Except as provided by the Act or the Rules, a liquidator shall not under any circumstances whatever make any arrangement for, or accept from any solicitor, auctioneer or any other person connected with the company of which he is liquidator, or who is employed in or in connection with the winding up of the company, any gift, remuneration or pecuniary or other consideration or benefit whatever beyond the remuneration to which under the Act or the Rules he is entitled as liquidator, nor shall he make any arrangement for giving up, or give up, any part of such remuneration to any such solicitor, auctioneer or other person."

It will be observed that this rule is very comprehensive, and appears to have been drafted in the widest possible terms in order to ensure that a liquidator should derive no benefit whatsoever from his position except such as he derives under the statutory provisions of the Act or the Rules. Nevertheless it was argued that the rule did not apply to the solicitor-liquidator in *The Gertzenstein Case, supra*, and it was said that the rule in *Cradock* v. *Piper* applied. The rule in *Cradock* v. *Piper* (1 Mac. & G. 664), is authority for the proposition as an exception to the general rule that a solicitor in a fiduciary position cannot charge profit costs for non-litigious business, that a solicitor-trustee acting for himself and his co-trustees

can get such profit costs out of the trust estate. Rule 158, it was said, is directed only to the case of profit-sharing where there is an arrangement between the liquidator and some other person whereby the liquidator will derive any unauthorised benefit. But these arguments failed to find favour with the learned judge, who held that *Cradock* v. *Piper*, *supra*, did not apply, and that r. 158 made it impossible for the solicitor-liquidator to bring his profit costs in for taxation. The learned judge expressed his opinion as to the scope and effect of the rule in these words: "The language of the rule does, in my judgment, prohibit any arrangement by which a liquidator may receive extra remuneration to that allowed by the Act and Rules. In this case there must have been some arrangement made between the two liquidators whereby one of them was to become entitled to some remuneration beyond what he is allowed by the Act and Rules, and in my judgment on the true interpretation of the rule the answer given by the learned registrar is a good one." The summons, therefore, failed, and was dismissed with costs.

A Conveyancer's Diary.

Excluding or Limiting the Operation of s. 62 (1) of the L.P.A., 1925, or Grants of Easements implied apart from Statute.

I HAVE recently had my attention called to the case of *Clark* v. *Dawes* [1929] 2 Ch. 368. That was a case where a vendor of land, who was also the owner of adjoining land over which there was a cart track or way, claimed a declaration that the defendant was not entitled to use the track, and also claimed rectification of the conveyance to the defendant by excluding any grant of a right of way over the track.

The facts were that the plaintiff was the owner of plots of land in the village of C and he had by his conveyance been granted a right of way over a track passing over adjoining plots. The plaintiff subsequently purchased the adjoining plots and so became owner of both the dominant and servient tenement. The right of way consequently became merged. In fact the plaintiff continued to use the track as a means of access from the land firstly purchased by him to an adjacent highway. The plaintiff then contracted to sell part of the land firstly purchased by him to the defendant. In the draft conveyance submitted to the plaintiff's solicitors by the defendant's solicitors, a right of way was inserted in favour of the defendant over the track on the plaintiff's adjoining land. This was struck out by the plaintiff's solicitors and no grant of any such right of way was expressed in the conveyance ultimately executed. The defendant however proceeded to use the track in the manner and for the purpose in and for which it had been used by the plaintiff and claimed a right to do so by reason of the provisions of s. 62 (1) of the L.P.A., 1925. The plaintiff claimed a declaration that the defendant had no such right of way and further that the conveyance to the defendant might be rectified by express exclusion therefrom of any implied right which might arise under s. 62 (1) of the L.P.A..

It may be convenient if I set out the sub-section here, so far as material.

The sub-section reads:—

> "A conveyance of land shall be deemed to include and shall by virtue of this Act operate to convey with the land all . . . ways, waters, watercourses, liberties, privileges, rights and advantages whatsoever, appertaining or reputed to appertain to the land or any part thereof or at the time of the conveyance, demised, occupied or enjoyed with or reputed or known as part or parcel of or appurtenant to the land or any part thereof."

That of course reproduced s. 6 (1) of the C.A., 1881, and I need not dwell upon the object of it, which obviously was to shorten conveyances by implying words which it had long been the custom to insert, often quite unnecessarily.

The defendant in *Clark* v. *Dawes* contended that the track or way in question had long been enjoyed, or reputed to appertain to or be enjoyed, with the land conveyed to him, and the grant of a right of way over it was implied by virtue of s. 62 (1).

Luxmoore, J., held that, upon the evidence, the right of way was reputed to be enjoyed with the defendant's land, and to that extent the defendant was entitled to succeed, but that the plaintiff was entitled to have the conveyance rectified.

The learned judge, after dealing with the evidence and stating that he had come to the conclusion that the right of way passed under an implied grant under s. 62 (1) of the L.P.A., continued: "That being so, the plaintiff would fail with regard to the declaration which he seeks so far as the conveyance itself is concerned and therefore it is necessary to consider the second question which is raised in the action, and that question is whether the plaintiff is entitled to rectification of the conveyance or not. That depends upon whether there has been a mutual mistake between the parties as to the terms in which the conveyance has been executed. As I have already pointed out, the contract itself does not include any provision which will entitle the defendant to claim to have such a right of way as he claims granted to him. The question then is, is the plaintiff entitled to have words inserted in the deed of conveyance to limit the operation of the Law of Property Act, 1925, s. 62, and to prevent the grant of such a right of way by implication? It is plain that if this point had been raised before the conveyance had been executed, and the court had been asked to determine what the form of the conveyance would be, such a limitation would undoubtedly have been inserted, and on this ground the plaintiff is entitled to have the conveyance rectified. Further, I am satisfied that it was not intended to grant any such right of way."

That judgment is important as showing that rectification by inserting words restricting the operation of s. 62 (1) will be granted if and only if the court is satisfied that there has been a mutual mistake. His lordship was satisfied on the evidence in that case that neither party contemplated that the conveyance would operate to impliedly grant the right of way in question.

In *Borman* v. *Griffith* [1930] 1 Ch. 493, by an agreement in writing, J agreed to demise to the plaintiff premises known as "The Gardens," with the paddock, orchard and adjoining gardens for seven years. These premises were in a large park, andwere not approached by any public road. The agreement did not expressly provide for any right of way to the plaintiff. Later, J demised the remainder of the park to the defendant. At the date of the agreement with the plaintiff, J was constructing and afterwards completed a drive over part of the park as a means of access to the premises of which the plaintiff was tenant, and the plaintiff constantly afterwards used the drive. The defendant obstructed the plaintiff in the use of the drive.

Maugham, J., held (i) that an agreement for a lease exceeding a term of three years, although required to be by deed, is not an "assurance of property or of an interest therein" within s. 205 (1) (ii) of the L.P.A., 1925, and therefore cannot be deemed to include the general words implied by s. 62 of that Act, and (ii) that the tenant was in the same position as if the court had granted specific performance of the agreement for lease to the plaintiff, i.e., in regard to right of way, as if, before the coming into force of the C.A., 1881, the property had been demised with no mention of rights of way; and that, in the circumstances, a demise to the plaintiff of a right to use the drive upon terms must be implied.

In that case the plaintiff was able to show that the use of the drive was reasonably necessary for the enjoyment of his premises, and, that being so, the learned judge held that

there was an implied grant independently of statute. His lordship said " where as in the present case two properties belonging to a single owner and about to be granted are separated by a common road, or where a plainly visible road exists over the one for the apparent use of the other and that road is necessary for the reasonable enjoyment of the property, a right to use the road will pass with the quasi dominant tenement unless by the terms of the contract that right is excluded."

A perusal of these cases is a reminder that it is important to consider in perusing and approving draft conveyances whether it is necessary to insert words which will limit or perhaps exclude altogether the operation of s. 62 (1) of the L.P.A., 1925, or expressly to exclude the grant of any apparent right of way which apart from statute might pass by implication.

In many cases, of course, it will be apparent that no such question can arise, but where it appears that there is any possibility of its arising I think that a solicitor acting for the vendor should explain the matter to his client and take his instructions as to whether or not there is occasion for inserting words which would prevent the passing of a right of way which might pass by implication, either under the statute or otherwise, and so throw the responsibility upon his client.

Landlord and Tenant Notebook.

The New Scope of the Rent, etc., Restrictions Acts.

In the year 1933, it was thought that the effect of work done and to be done under the Housing Acts would be such that in five years' time there would be no more mischief for the Rent, etc., Restrictions Acts to remedy or prevent. So the Rent, etc., Restrictions (Amendment) Act, 1933, besides decontrolling a class of protected dwellings known as " Class A " houses, provided that control of other protected dwellings imposed by the Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1925 (the principal Acts) should continue in force until the 24th June, 1938, and no longer.

Expectations have apparently not been fulfilled and the Increase of Rent and Mortgage Interest (Restrictions) Act, 1938, which became law on the 26th May last, commences by enacting that the principal Acts shall continue in force until the 24th June, 1942. (The " and no longer," which was also a feature of the original 1915 Act—" during the continuance of the present war and for a period of six months thereafter and no longer "—has been omitted this time). But, like the 1933 statute, the new Act does—that is to say as from the 29th September, 1938—decontrol a class of protected dwellings and the practitioners' first concern will be the definition of this class.

The definition is by reference to rateable value—which means net annual value—on the 6th April, 1931, in London; on the 1st April, 1931, elsewhere in England and Wales. Houses within the metropolitan police district and the City of London with a rateable value of £35 or more, and those elsewhere with a rateable value of £20 or more, on the respective dates, will become decontrolled on Michaelmas Day next. (In effect, Class B has been divided into two sub-classes. The limits of the class in question, as created by the 1933 statute, were £20–£45 for London houses, £13–£35 for provincial houses. The upper limit was rateable value or recoverable rent, whichever was higher; we are now no longer concerned with recoverable rent, which meant the standard rent plus authorised increases.)

There is an important exception to the new provision, affecting what may be called sub-divided dwelling-houses. It is well-known that parts of many controlled properties are sub-let. So the new Act provides that in cases in which part of a dwelling-house was controlled on the 26th May last, and was either lawfully sub-let and occupied as a separate dwelling on the 6th December, 1937, or was then vacant and to be let (the Act says " to let " : Mr. A. P. Herbert must have been absent) as a separate dwelling, one is to subtract the rateable value of the part in question from that of the whole and if the result is a figure within the new limit the whole property (both dwellings) is to remain controlled.

It is useful to recall here that as rating authorities rarely make separate assessments in these cases (though they may—see the " Notebook " 79 Sol. J. 177), s. 12 (3) of the 1920 Act provides for apportionment of standard rent or the rateable value on the application of either party. It was held in *R.* v. *Judge of Marylebone County Court* [1923] 1 K.B. 365, that the court had jurisdiction to apportion the standard rent under that sub-section regardless of whether other proceedings were pending between the parties, and while the judgment refers to the tenant's right, under s. 11 of the same Act, to a written statement as to what the standard rent is, and there is of course no corresponding right to a statement of the rateable value, I think the reference in question is merely by way of additional support.

I have so far followed the scheme of the new Act, the provisions dealt with being contained in ss. 1 and 2 (1) and (2), but as I am treating the subject from the viewpoint of the legal practitioner, I now propose to draw attention to matters which will next require his attention, namely the provisions as to registration. These are contained in s. 4.

Houses in London with a rateable value of £20 or more on the 6th April, 1931, and those in the country with a rateable value of £13 or more on the 1st April, 1931, which have become decontrolled by the landlord coming into possession, or by a minimum two-year lease (i.e., by virtue of the 1923 Act, s. 2), must be registered with the county or county borough council. The application for registration must be made by the 26th August next, i.e., within three months of the passing of the Act. It will be noted that so far the provisions for registration are the same as the corresponding provisions of the 1933 Act. And, like the 1933 statute, the new Act gives landlords a *locus penitentiæ*: on reasonable excuse being shown, the county court might grant a certificate entitling the landlord to apply. But no application for a certificate is to be entertained after the 26th May, 1939 (and the section also provides that no certificate under the 1933 Act is to be granted after 26th August of this year). " Reasonable excuse " was dealt with in the " Notebook " 77 Sol. J. 639; it was suggested that the principles governing late notices of accident, etc., under the Workmen's Compensation Acts, might be roughly applicable. It is now enacted that illness, absence abroad, or some " other similar cause," or some cause beyond the applicant's control, are essential.

Another new provision is that the application form prescribed by the Ministry of Health must state the grounds. A comprehensive form will be found in the Provisional Rules and Orders, No. 97031, issued on the 27th May last. Failure to register will mean that, despite the operation of s. 2 of the 1923 statute, the house will be treated as controlled. If a house not decontrolled is registered and this transpires either in proceedings or (and this is new) on an application by either party (see Sch. II), the registration will be cancelled on the register or clerk of the court informing the council concerned.

Next, " transitional provisions," adapted from the 1933 Act, and to be found in Sch. I, will be of interest. These are designed to prevent the newly decontrolled tenants from waking up on the 30th September next suddenly to find themselves, after all these years, trespassers; and to safeguard the rights conferred on some of them by L.T.A., 1927.

Thus, any landlord of property affected who desires to obtain possession on Michaelmas Day must serve notice to that effect before the 29th August, the tenant being entitled to one month's notice. And, as was the case with the 1933

statute, a notice may contain a condition resolutive, namely, one to the effect that possession is required unless an agreement for a new tenancy is concluded before the expiration of the notice.

Further, the notice may either contain or be accompanied by a written offer of the terms of a new tenancy *and* a written statement that if the offeree remains in possession after the date when the notice expires he will be deemed, *by virtue of the Act*, to do so on those terms, his retaining of possession will be deemed to be on those terms. This overrides for present purposes the principle enunciated in Y.B., 17 Ed. IV, 1, when inspection and approval of offered subject-matter were held not to constitute a contract without the offeree showing that he had "certified the other of his pleasure." Accordingly, it is to be expected that the provision will be strictly construed, and an omission, e.g., to refer to the Act as directed, would be fatal.

On the other hand, a landlord accepting "rent or mesne profits" after the expiration of a notice is not thereby prejudiced; in other words, there is to be no presumption of a new tenancy by holding over as in *Doe d. Cates* v. *Somerville* (1826), 6 B. & C. 126. The phraseology of this provision, contained in Sch. I, para. 3, is, perhaps, a little unfortunate, for it might be said that if rent be accepted there must be, and if mesne profits be accepted, there cannot be, a new tenancy. It may be observed that the exceptional circumstances surrounding the Rent, etc., Restrictions Acts have already shown that the common law presumption is rebutted when the effect of a notice to quit is merely to convert a contractual tenancy into a statutory one. The 1920 Act itself, by s. 16 (3), provides that acceptance of rent for not more than three months from the expiration of a notice to quit shall not be deemed to prejudice any right to possession, but in *Shuter* v. *Hersh* [1922] 1 K.B. 438, Bankes, L.J., adopting the views of Shearman, J., in *Davies* v. *Bristow* [1920] 2 K.B. 161, held that acceptance for a longer period did not warrant the inference of a new tenancy. This does not mean that the new enactment is otiose, for the notice it deals with is a third variety of notice to quit and the recipient has no statutory right to retain possession; but the language is ill-chosen.

When the controlled house about to be decontrolled includes business premises to which goodwill has become attached, the tenant may serve a notice requiring the grant of a new lease under L.T.A., 1927, s. 5 (compensation in money being inadequate), or the landlord may serve notice offering, a renewal under s. 2 or s. 4 of that Act. In these cases, the tenant who holds over will not be deemed to accept the written offer; and he should, if necessary, be advised to seek an interim order under L.T.A., 1927, s. 6 (13).

Our County Court Letter.

THE CONTRACTS OF VARIETY ARTISTS.

In a recent case at Manchester County Court (*Hopley* v. *Gillam*) the claim was for £12 as damages for breach of contract. The plaintiff and his wife had been engaged by the defendant to perform their trick-cycling and comedy act in a pantomime for the week beginning the 10th January, 1938. The space available, owing to a staircase leading on to the stage, was 12 feet. The defendant told them to do their best, but the plaintiff's wife could not help hitting the staircase, and she fell off her machine at the first performance. The plaintiffs were nevertheless prepared to appear at the second performance, but were not allowed to do so. The defendant's case was that the contract had not been broken by himself, but by the plaintiffs. During the second performance a request was made for the removal of the steps, but the stage manager said that this was impossible. This was confirmed by the defendant, whereupon the plaintiffs refused to perform their act. The defendant accepted this as a repudiation by them of the contract. His Honour Judge Leigh held that the plaintiffs were prepared to do their best, and had not definitely refused to go on. Whatever they had said was due to the defendant's failure to provide reasonable facilities, and the contract was broken by him. Judgment was given for the plaintiff for £12 and costs.

ACCIDENT TO CINEMA PATRON.

In *Proffitt* v. *Associated British Cinemas Ltd.*, recently heard at Walsall County Court, the claim was for £20 as damages for negligence. The plaintiff was aged sixty-two, and her case was that, while descending the stairs from the gallery, she caught her foot in a hole in the carpet. Her injuries included a fractured fore-arm, and a further allegation was that the stairs were not properly illuminated. Corroborative evidence was given that another woman had fallen, on the same evening, and the light from a match had revealed the hole in the carpet. The defence was that the stairs were illuminated by a red light at the top. The plaintiff was a regular visitor, and would never let the attendant show her to a seat. Nothing was said about the carpet until a few days later, when the plaintiff's son called. It was then found that there was some fraying, but no hole. The carpet was in reasonably good condition, and had been relaid after being taken up from the circle. The bad parts had been taken out, and the carpet was reconstructed. The alleged accident was on the 11th May, 1937, but no hole was found by the insurance agent on the 27th May or in June. His Honour Judge Tebbs observed that the section of carpet might have been produced, but it had not been brought for inspection. Judgment was given for the plaintiff, with costs.

THE CONTRACTS OF COAL MINERS.

In *Rees* v. *Powell Duffryn Associated Collieries Ltd.*, recently heard at Bridgend County Court, the plaintiff was a packer, and he claimed the amount of wages lost on thirteen Mondays between June and October, 1937, when he presented himself for work but was turned away. A notice was posted in May, 1937, that the Sunday night shift would in future be a full working shift, whereas only those required for emergency work had previously been required to attend. In no other colliery area was it usual to do coal filling on Sunday nights, and, owing to objections from the men, the notice was eventually withdrawn. The defendants' case was that the alteration in the cycle of shifts was due to the increased demand for coal. The notice had been misconstrued, as it was not meant for an ultimatum, and the Sunday night shift was still optional. The notice merely meant that the men should present themselves and would be given work if necessary. The miners' lodge, however, had decided that there should be no "filling" on Sunday night, and the production of coal was retarded, whereby the miners lost wages. His Honour Judge Clark Williams, K.C., held that the defendants could not be held liable for the failure of the coal-fillers to present themselves for work. Judgment was given for the defendants, with costs on Scale B.

RECENT DECISIONS UNDER THE WORKMEN'S COMPENSATION ACTS.

YELLOW FEVER NOT AN ACCIDENT.

In the test case of *Craig* v. *Dover Navigation Co., Ltd.*, at Newcastle-on-Tyne County Court, the applicant's case was that her deceased husband had contracted fever from drinking impure water or eating contaminated food in the s.s. "Sea Rambler," in August, 1937. The evidence was that the ship had left Zinguinshor, on the African Coast, where mosquitoes were numerous. Owing to illness among the crew, the captain

put into Funchal, where the port doctor attributed the six deaths on board to botulism or food poisoning. The respondents' case was that this was a mistaken diagnosis, as the illnesses were due to mosquito bites. His Honour Judge Richardson held that there was no evidence that the death of the applicant's husband was due to botulism. Although the water taken on board at Caronte was dirty and unpleasant, and unfit for use as a beverage, there was no evidence that it was definitely unwholesome or deleterious to human health. None of the men had died from drinking water affected by sewage pollution. All those who had died, or were taken ill, were affected by malaria or yellow fever or a combination of both. There was no evidence that bad water or contaminated food had any part in causing or accelerating death. A bite from a mosquito, while on board the ship, was not an accident arising in the course of employment. If such a claim were to succeed, anyone who could prove he had contracted influenza while at work, could claim that it was an accident arising out of and in the course of his employment. Something more than a community risk was necessary, in order to establish a claim. No award was therefore made.

ORIGIN OF SILICOSIS.

In *Whittall* v. *Malehurst Barytes Co., Ltd.*, at Shrewsbury County Court, the applicant's case was that, after working at the respondents' mills for twelve years, he ceased work on the 1st February, 1937. On the 29th May, 1937, he was examined by a medical board, who certified on the 7th June that he was suffering from silicosis and was totally disabled. At the respondents' mill there were two sorts of crushers, one with iron and the other with stone rollers. They were close together, so that, whichever he worked on, the applicant inhaled the dust from the other. Throughout 1934, and the first few months of 1935, the applicant worked on the iron mill. During the previous twenty years the applicant had not worked in any occupation which would bring him into contact with silica dust. A geologist gave evidence that, on the 16th November, 1937, he took samples of the materials entering the respondents' mills. One of the five samples contained a substantial amount of silica rock, and two other samples contained a certain amount. The three samples were going to the iron mill. The respondents admitted the total disablement, but denied that it was due to employment in their mill. The ore was hand-picked and washed, before reaching the mills, to separate the barytes from the rock. It was impossible to prevent every bit of rock from entering the crushers, and the amount of free silica (in samples taken on the 8th April, 1938) ranged from 0·11 in Grade I to 8·2 in Grade V. Samples were taken from the air-borne dust round the stone and iron mills, and it was improbable that a case of silicosis would arise in conditions prevailing at the mills—as opposed to the mine. His Honour Judge Samuel, K.C., made an award of £1 4s. 5d. a week from the 2nd February, 1937, to date, and to continue, with costs.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Municipal Audit Systems.

Sir,—Can any of your readers, familiar with municipal law, kindly inform me whether there is anything in the Acts to prevent reversion to the elective audit system after the professional audit system has once been adopted?

It is a matter of great interest at the moment when so much discussion is taking place concerning the menace of ever increasing rates.

London, E.C.2. RATES PARLIAMENT.

Practice Notes.

SERVICE OUT OF THE JURISDICTION.

"It would be a breach of Ord. XI, r. 1 (*e*), to permit the plaintiff, who has obtained leave to serve a writ on the defendant—admittedly domiciled in Scotland—claiming damages for fraudulent misrepresentation—that is, for a tort—to add to that claim in his statement of claim one for breach of warranty." Thus, Greer, L.J., in *Waterhouse* v. *Reid* (1938), 54 T.L.R. 332, 333; 82 SOL. J. 93.

Service out of the jurisdiction may be allowed against a defendant *not domiciled or ordinarily resident in Scotland* (*inter alia*), to recover damages for a *breach of contract* made within the jurisdiction. No such qualification of domicile or residence exists where the action is founded on a *tort* committed within the jurisdiction (r. 1 (*ee*)). Against a defendant domiciled or ordinarily resident in Scotland, service of a writ outside the jurisdiction, claiming damages for such a tort, may be allowed.

W, a doctor, sued R, a doctor, for damages for alleged fraud on the sale of a medical practice and a house in Sunderland. R was admittedly domiciled in Scotland, but resident in Iraq, and Swift, J., gave leave to serve the writ on him in Iraq. Writ and statement of claim were accordingly so served: but the statement of claim also contained a claim for damages for *breach of warranty* in respect of the sale of the practice.

The defendant took out a summons to strike out the claim for damages for breach of warranty on the ground that a claim for damages for breach of contract could not be allowed where the defendant was admittedly domiciled in Scotland. Master Burnand dismissed the summons, and Hilbery, J., affirmed his decision, but gave leave to appeal.

On appeal it was urged that under Ord. XX, r. 4, the plaintiff might extend his claim without amending his writ (see also *Large* v. *Large* [1877] W.N. 198); this, it was contended, he could also do where leave to serve a writ out of the jurisdiction had been properly granted. The appeal was allowed and the claim for damages for breach of warranty was ordered to be struck out. The court had no power to alter r. 1 (*e*), because it would be convenient to try the claim for damages for breach of alleged warranty in the same action as the claim for damages for alleged fraud. Had application been made, in the first instance, for leave to serve the defendant in Iraq with a writ claiming damages for breach of warranty, it must have been refused. There is no power to allow such service; the party suing must in such case follow the party sued: *Lenders* v. *Anderson* (1883), 12 Q.B.D. 50, 54, 56. Order XX, r. 4, could not give the court a general power already restricted by Ord. XI. "The plaintiff cannot be placed in any better position by inserting such a cause of action in his statement of claim without leave than he would have been had he asked for leave to serve a writ containing the claim for breach of warranty and been refused": per Scott, L.J., at p. 334.

ACTION RETAINED IN HIGH COURT.

THAT considerable weapon—*Stevens* v. *Walker* [1936] 2 K.B. 215—should never be allowed by the plaintiff's advisers to rust, where the defendant seeks to transfer a difficult or important case to the county court upon default by the plaintiff in giving security for costs.

In *Phillips and Another* v. *A. Lloyd & Sons, Ltd.* (1938), 54 T.L.R. 337; 82 SOL. J. 111, that authority was used with success. The members of the Court of Appeal had determined that, in future, both branches should act on the same principle, viz., that where "the learned judge has not given adequate weight to the considerations which ought to weigh with him, then the court may exercise its own discretion and reverse the order made by the learned judge": per Greer, L.J., at p. 337. This is in accordance with the principles laid

down in *Evans* v. *Bartlam* [1937] A.C. 473. (See per Lord Atkin, at pp. 480, 481, and per Lord Wright at pp. 486, 487.) Lord Wright, M.R. (as he then was), had stated this rule in *Stevens* v. *Walker* [1936] 2 K.B. 215 (at p. 223).

In *Phillips* v. *A. Lloyd & Sons, Ltd.*, P, an infant, sued the defendants for damages for personal injuries caused by alleged negligence or breach of statutory duty. An employee of the defendants at their factory, she was operating a power-driven power press, which, she alleged, was unfenced and in a dangerous state, when her right hand was caught in the press, causing injury and shock and necessitating the amputation of her right thumb. The defendants admitted the accident but denied negligence or breach of statutory duty. They asserted that the plaintiff was guilty of contributory negligence, and they also pleaded common employment and that the plaintiff knew of the danger and consented to risk it.

Master Burnand ordered the action to be transferred to the county court unless within fourteen days the plaintiff gave security for the defendants' costs in the sum of £30. Porter, J., dismissed the appeal, but gave leave to appeal.

By s. 46 (1) of the County Courts Act, 1934, where an action founded on tort is begun in the High Court, the defendant may, on affidavit showing that the plaintiff, "*should a verdict not be found for the plaintiff*," has "no visible means" of paying the defendant's costs, apply to the High Court for an order to transfer the action to a county court. By s. 46 (2), unless the plaintiff proves that he has such means, the High Court *may, if it thinks fit*, "*having regard to all the circumstances of the case*," order the transfer of the action to a named county court (the most convenient to the parties), unless the plaintiff within a fixed time gives satisfactory security for the defendant's costs.

Slesser, L.J., in the present case, usefully summarised (at p. 338) some of the grounds upon which an action should be retained in the High Court. Three were mentioned by Lord Wright in *Stevens* v. *Walker*, *supra*; these are not exclusive and (as Slesser, L.J., observed) "there may well be others." *First*, is the damage claimed considerable? *Secondly*, is it probable that the defendants will not have a substantial defence? *Thirdly*, if they have a substantial defence, will that defence involve difficult questions of law?

Here, admittedly, the girl had lost her thumb—a serious and permanent disability—becoming (as was alleged by affidavit) an "odd lot on the labour market." Next, an uncontradicted affidavit was sworn that the defendants had been convicted and fined for a breach of statutory duty under the Factory Acts. Further, the allegation in the present case and in the present state of the authorities of contributory negligence would raise a difficult question of law. The court, therefore, allowed the appeal, holding that the case was more suitable to be tried in the High Court than in the county court.

In *Stevens* v. *Walker*, *supra*, Lord Wright examined some of the grounds upon which an action might properly be retained in the High Court. The court, he observed, should have regard to "the gravity of the case," and the probability that damages might be "on a large scale." County court judges were not usually accustomed to "dealing with the very substantial sums by way of damages which may be necessary in order to give compensation . . . for a very serious injury": at p. 221 of [1936] 2 K.B. Another matter to be considered was the question whether the plaintiff had a good *primâ facie* cause of action and whether or not the defendant had a good *primâ facie* defence. The court should inquire "with some care" into the question whether there is a defence. The application to transfer should not be considered until after statement of claim and defence had been delivered, or at least an affidavit swearing to a good defence on the merits (at pp. 221, 222). The possibility of a difficult point of law was not the only ground upon which an action should be retained in the High Court. "The magnitude of the interests involved," said Romer, L.J. (as he then was), was a circumstance to be considered just as much as "the importance or difficulty of any questions of law that arise" (at p. 224). "In cases of real gravity," Charles, J., added (at p. 226), "the more appropriate tribunal is the High Court, which is frequently and constantly considering matters involving very large sums of money."

Reviews.

A Summary of the Law of Torts. By Sir Arthur Underhill, M.A., LL.D., of Lincoln's Inn, Barrister-at-Law. Thirteenth Edition, 1937. By Ralph Sutton, M.A., of Lincoln's Inn, one of His Majesty's Counsel. Demy 8vo. pp. lxxx and 393 (Index, 34). London: Butterworth & Co. (Publishers), Ltd. 12s. 6d. net.

In its new edition this valuable text-book remains one of the best works on its subject to meet the needs of the student. Of those needs both the author and the editor have gained first-hand experience as Readers to the Council of Legal Education. Their concise and clear presentation of the principles of the law of tort is calculated to provide all the material necessary for transforming the ignorant but industrious student into a competent general practitioner, whose deeper researches into the law reports will be immeasurably facilitated by the mastery gained from a thorough knowledge of this work. The various alterations made necessary by the development of the law since the last edition have been carefully and accurately planned. In particular the results of the Law Reform (Married Women and Tortfeasors) Act, 1935, have been notably well expounded. The first chapter on "The Nature of a Tort" is sufficiently complete and comprehensive to stand by itself as an epitome of the subject.

Change and Decay. By Sir Arthur Underhill, Kt., LL.D., Bencher of Lincoln's Inn. 1938. Demy 8vo. pp. (with Index) 229. London: Butterworth & Co. (Publishers), Ltd. 7s. 6d. net.

Here is a book of reminiscences in which a Victorian, born in the year when Peel and Wordsworth and Louis Philippe died, looks back on a long life which he has thoroughly enjoyed. His personal impressions of the great judges and advocates of his past who to young men already seem inconceivably remote, have a very special value, interspersed as they are with a great many anecdotes, some, perhaps, well worn, but most of them refreshingly "gravity removing." But the interests here revealed go beyond the law and all those who love sail and salt water will find much pleasure in the pages telling of yachting days and yachting men. This story of a happy life embraces many interesting comparisons of past with present and, though it does not aspire to the heights of literary artistry, it makes easy and pleasant reading. It should be noted that in spite of the seeming suggestion of its title, mournful yearnings for the things that have been fair are far from the author's mood. It is a pity that in the revision of the proofs a good many printing slips have escaped elimination.

Books Received.

Sir John Simon. Being an account of the life and career of John Allsebrook Simon, G.C.S.I., K.C.V.O., K.C., M.P. By Bechhofer Roberts ("Ephesian"). 1938. Demy 8vo. pp. (with Index) 320. London: Robert Hale, Ltd. 12s. 6d. net.

The Journal of the University of Manchester. Vol. I. No. 2. 1938. Manchester: Manchester University Press.

COUNTY COURT CALENDAR FOR JULY, 1938.

Circuit 1—Northumberland, etc.
His Hon. Judge Richardson
Alnwick,
Berwick-on-Tweed,
Blyth, 1
Consett, 22
Gateshead, 12
Hexham,
Morpeth,
†*Newcastle-upon-Tyne, 6 (R.B.), 13, 15 (J.S.), 21 (B.), 27 (R.B.) (*R. every Thursday.*)
North Shields, 14
Seaham Harbour, 4
South Shields, 18, 20
Sunderland, 19, 26, 27

Circuit 2—Durham, etc.
His Hon. Judge Gamon
Barnard Castle, 7
Bishop Auckland, 19
Darlington, 6
*Durham, 5, 18
Guisborough, 28
Leyburn, 20
†*Middlesbrough, 13 (J.S.), 14, 27
Northallerton, 21
Richmond,
†*Stockton-on-Tees, 12, 26
Thirsk,
†West Hartlepool, 1, 15

Circuit 3—Cumberland, etc.
His Hon. Judge Allsebrook
Alston, 16
Appleby, 16 (R.)
†*Barrow-in-Furness, 21, 22
Brampton,
*Carlisle, 12, 27 (R.)
Cockermouth, 14
Haltwhistle,
*Kendal, 20
Keswick,
Kirkby Lonsdale, 12 (R.)
Millom, 19
Penrith, 15
Ulverston,
†*Whitehaven, 13
Wigton,
Windermere, 7 (R.)
*Workington,

Circuit 4—Lancashire.
His Hon. Judge Peel, O.B.E., K.C.
Accrington, 7
†*Blackburn, 4, 6 (R.B.), 11, 15, (J.S.)
†*Blackpool, 6, 8, (R.B.), 13, 20, (J.S.), 21
*Chorley, 14
Clitheroe, 12 (R.)
Darwen, 29 (R.)
Lancaster, 8
†*Preston, 5, 12, 15 (R.B.), 19 (J.S.)

Circuit 5—Lancashire.
His Hon. Judge Crosthwaite
†*Bolton, 5 (J.S.), 13, 20, 26 (J.S.)
Bury, 11, 18 (J.S.)
*Oldham, 7 (J.S.), 14, 21, 28 (J.S.)
*Rochdale, 8, 22 (J.S.), 29
*Salford, 4, 6 (J.S.), 12, 15, 19 (J.S.), 25, 27 (J.S.)

Circuit 6—Lancashire.
His Hon. Judge Dowdall, K.C.
His Hon. Judge Procter
†*Liverpool, 1 (B.), 4, 5, 6, 7, 8 (B.), 11, 12, 13, 14, 15 (B.), 18, 19, 20, 21, 22 (B.), 25, 26, 27, 28, 29 (B.)
St. Helens, 13, 27
Southport, 12, 26
Widnes, 15
*Wigan, 14, 28

Circuit 7—Cheshire, etc.
His Hon. Judge Richards
Altrincham, 13, 27
*Birkenhead, 6 (R.), 11, 14 (R.), 18, 21 (R.), 27 (R.), 28
Chester, 5, 26
*Crewe, 8
Market Drayton, 22
Nantwich, 4
*Northwich, 7
Runcorn, 12
Sandbach,
*Warrington, 14, 29

Circuit 8—Lancashire.
His Hon. Judge Leigh
Leigh, 1, 22
†*Manchester, 4, 5, 6, 7, 8 (B.), 11, 12, 13, 14, 18, 19, 20, 21, 22 (B.), 25, 26, 27, 28

Circuit 10—Lancashire, etc.
His Hon. Judge Burgis
*Ashton-under-Lyne, 1, 25 (R.B.)
*Burnley, 18 (R.B.), 21, 22
Colne,
Congleton, 15
Hyde, 13
*Macclesfield, 12 (R.B.), 28
Nelson, 20
Rawtenstall, 6
Stalybridge, 7, 14
*Stockport, 5, 12, 26, 27, 29 (R.B.)
Todmorden, 19

Circuit 12—Yorkshire.
His Hon. Judge Frankland
*Bradford, 1 (J.S.), 5 (R.B.), 13, 15 (J.S.), 19 (R.), 22 (R.B.), 26, 29
Dewsbury, 7 (R.B.), 12
*Halifax, 7, 8 (J.S.)
*Huddersfield, 5, 6 (J.S.), (R.B.)
Keighley, 21
Otley, 20
Skipton, 22
Wakefield, 14 (R.B.), 19, 26 (R.)

Circuit 13—Yorkshire, etc.
His Hon. Judge Essenhigh
*Barnsley, 20, 21, 22
Glossop, 27
Pontefract, 4, 5, 6, 25, 26
Rotherham, 12, 13
*Sheffield, 1, 7, 8, 14, 15, 19 (J.S.), 28, 29

Circuit 14—Yorkshire.
His Hon. Judge Stewart
Easingwold, 18 (R.)
Harrogate, 7 (R.), 8, 28 (R.), 9
Helmsley,
Leeds, 1 (R.), 6, 7 (J.S.), 12 (R.B.), 13, 14, (J.S.), 15 (R.), 20, 21 (J.S.), 26 (R.B.), 27, 28 (J.S.)
Ripon, 19
Tadcaster,
York, 12, 26

Circuit 16—Yorkshire.
His Hon. Judge Sir Reginald Banks, K.C.
Beverley, 7 (R.), 8
Bridlington, 4
Goole, 26
Great Driffield, 25
†*Kingston upon Hull, 11, 12, 13, 14, 15 (J.S.), 18 (R.B.)
New Malton, 27
Pocklington,
*Scarborough, 5, 6, 12 (R.B.)
Selby,
Thorne, 28
Whitby, 6 (R.), 7

Circuit 17—Lincolnshire.
His Hon. Judge Langman
Barton-on-Humber, 19 (R.), 26
†*Boston, 7 (R.), 14, 21 (R.B.)
Brigg,
Caistor,
Gainsborough, 8 (R.), 15
Grantham, 22
†*Great Grimsby, 5, 6 (J.S.), 7 (R.B.), 8, 20 (J.S.), 21 (*R. every Wednesday*)
Holbeach, 28
Horncastle, 4 (R.)
*Lincoln, 7 (R.), 11
*Louth, 12
Market Rasen, 6 (R.)
Scunthorpe, 11 (R.), 18
Skegness, 8 (R.)
Sleaford, 19
Spalding, 27 (R.)
Spilsby, 13

Circuit 18—Nottinghamshire, etc.
His Hon. Judge Hildyard, K.C.
Doncaster, 6, 7, 18, 27
East Retford, 5 (R.), 26
Mansfield, 4, 5
Newark, 22 (R.), 25
*Nottingham, 7 (R.B.), 13, 14 (J.S.), 15, 20, 21, 22 (B.)
Worksop, 12 (R.), 19

Circuit 19—Derbyshire, etc.
His Hon. Judge Longson
Alfreton, 12
Ashbourne, 5
Bakewell,
Burton-upon-Trent, 13, 27 (B.)
Buxton,
*Chesterfield, 8, 15
*Derby, 6, 19 (R.B.), 20, 21 (J.S.)
Ilkeston, 19
Long Eaton,
Matlock, 4
New Mills, 11
Wirksworth,

Circuit 20—Leicestershire, etc.
His Hon. Judge Galbraith, K.C.
Ashby-de-la-Zouch, 21
*Bedford, 19 (R.B.), 25, 27
Bourne, 22
Hinckley, 20
Kettering, 26
*Leicester, 1 (R.B.), 11, 12, 13, 14 (B.), 15, 18, 29 (R.)
Loughborough, 19
Market Harborough,
Melton Mowbray, 8 (R.), 29
Oakham, 28 (R.)
Stamford,
Wellingborough, 28

Circuit 21—Warwickshire.
His Hon. Judge Dale
His Hon. Judge Ruegg, K.C. (Add.)
*Birmingham, 1, 4, 5, 6, 7, 8, 11, 12 (B.), 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29

Circuit 22—Herefordshire, etc.
His Hon. Judge Roope Reeve, K.C.
Bromsgrove, 21
Bromyard, 13
Evesham, 20
Great Malvern, 11
Hay, 6
*Hereford, 19
*Kidderminster, 5
Kington,
Ledbury,
*Leominster, 18
*Stourbridge, 7, 8
Tenbury,
*Worcester, 14, 15

Circuit 23—Northamptonshire.
His Hon. Judge Hurst
Atherston,
Bletchley, 25
*Coventry, 5, 13 (R.B.), 18, 19, 26
Daventry, 8
Leighton Buzzard, 21
*Northampton, 1 (R.B.), 11, 12, 19 (R.)
Nuneaton, 15
Rugby, 14, 21 (R.)

Circuit 24—Monmouthshire, etc.
His Hon. Judge Thomas
Abergavenny, 28
Abertillery, 12
Bargoed, 13
Barry, 7
†*Cardiff, 4, 5, 6, 8, 9
Chepstow,
Monmouth, 26
†*Newport, 12 (B.), 19, 21
Pontypool and Blaenavon, 20
*Tredegar, 14

Circuit 25—Staffordshire, etc.
His Hon. Judge Tebbs
*Dudley, 12, 19 (J.S.), 26
*Walsall, 7, 14 (J.S.), 21, 28 (J.S.)
*West Bromwich, 6 (J.S.), 13, 20 (J.S.), 27
*Wolverhampton, 8 (J.S.), 15, 22 (J.S.), 29

Circuit 26—Staffordshire, etc.
His Hon. Judge Ruegg, K.C.
Burslem,
*Hanley, 7 (R.), 21, 22
Leek, 11
Lichfield, 13
Newcastle-under-Lyme, 12
*Stafford, 8
*Stoke-on-Trent, 6
Stone, 25
Tamworth, 14
Uttoxeter, 15

Circuit 28—Shropshire, etc.
His Hon. Judge Samuel, K.C.
Brecon,
Bridgnorth,
Builth Wells,
Craven Arms,
Knighton,
Llandrindod Wells,
Llanfyllin, 15
Llanidloes, 6
Ludlow, 11
Machynlleth, 8
Madeley, 14
*Newtown, 7
Oswestry, 12
Presteign,
*Shrewsbury, 18, 21
Wellington, 19
Welshpool, 13
Whitchurch, 20

Circuit 29—Carnarvonshire, etc.
His Hon. Judge Sir Artemus Jones, K.C.
Bala, 6
†*Bangor, 11
BlaenauFestiniog,
*Carnarvon, 13
Colwyn Bay, 14
Conway,
Corwen, 6
Denbigh, 23
Dolgelly, 5
Flint, 22 (R.)
Holyhead, 12
Holywell, 4
Llandudno,
Llangefni,
Llanwrst, 16
Menai Bridge,
Mold, 20 (R.)
*Portmadoc,
Pwllheli, 8 (R.)
Rhyl, 15
Ruthin,
*Wrexham, 18, 19

Circuit 30—Glamorganshire.
His Hon. Judge Williams, K.C.
*Aberdare, 5
Bridgend, 26, 27, 28, 29
Caerphilly, 21 (R.)
*Merthyr Tydfil, 7, 8
*Mountain Ash, 6
Neath, 19, 20, 21
*Pontypridd, 13, 14, 15
Port Talbot, 22
*Porth, 11
*Ystradyfodwg, 12

Circuit 31—Carmarthenshire, etc.
His Hon. Judge Davies.
Aberayron,
†*Aberystwyth, 7
Ammanford, 6, 20
Cardigan, 4
†*Carmarthen,
†*Haverfordwest, 19
Lampeter,
Llandilofawr, 5
Llandovery,
Llanelly, 8, 9
Narberth, 18
Newcastle-in-Emlyn,
Pembroke Dock,
*Swansea, 11, 12, 13, 14, 15, 16

Circuit 32—Norfolk, etc.
His Hon. Judge Rowlands
Beccles, 25
Bungay,
Diss,
Downham Market,
East Dereham, 6
Eye, 26
Fakenham, 12
†*Great Yarmouth, 21, 22
Harleston, 11
Holt, 7
†*King's Lynn, 14, 15
†Lowestoft, 8
North Walsham, 13
*Norwich, 19, 20
Swaffham,
Thetford,
Wymondham,

Circuit 33—Essex, etc.
His Hon. Judge Hildesley, K.C.
Braintree, 15
*Bury St. Edmunds, 19
*Chelmsford, 11
Clacton, 26
Colchester, 13, 14
Felixstowe,
Halesworth,
Halstead, 29
Harwich,
†*Ipswich, 6, 7, 8
Maldon, 28
Saxmundham, 12
Stowmarket, 22
Sudbury, 27
Woodbridge, 20

Circuit 34—Middlesex.
His Hon. Judge Dumas
Uxbridge, 12, 19, 26

Circuit 35—Cambridgeshire, etc.
His Hon. Judge Campbell
Biggleswade, 5
Bishops Stortford, 25
*Cambridge, 13 (R.), 20, 21, 27 (R.B.)
Ely, 19
Hitchin, 11
Huntingdon, 8 (R.), 14
*Luton, 7, 8, 22 (R.B.)
March, 18
Newmarket, 28
Oundle,
*Peterborough, 8 (R.), 12, 13
Royston, 15
Saffron Walden, 4
Thrapston, 27
Wisbech, 15 (R.), 26

Circuit 36—Berkshire, etc.
His Hon. Judge Cotes-Preedy, K.C.
*Aylesbury, 8, 22 (R.B.)
Banbury, 6 (R.B.), 13, 20 (R.B.)
Buckingham, 19
Chipping Norton, 27
Henley-on-Thames, 15
High Wycombe, 7
*Oxford, 18, 25 (R.B.)
*Reading, 14 (R.B.), 21, 22
Shipston-on-Stour, 26
Thame, 14
Wallingford, 11
Wantage, 5
*Windsor, 12, 20, 28
Witney, 6

Circuit 37—Middlesex, etc.
His Hon. Judge Hargreaves
Chesham, 5.
*St. Albans, 9.
West London, 1, 4, 6, 7, 8, 11, 12, 13, 14, 15, 18, 20, 21, 22, 25, 26, 27, 28, 29.

Circuit 38—Middlesex, etc.
His Hon. Judge Hancock
Barnet,
*Edmonton,
*Hertford,
Waltham Abbey,
Watford,
(*List not yet received.*)

Circuit 39—Middlesex.
His Hon. Judge Lilley
His Hon. Judge David Davies, K.C. (Add.)
Shoreditch, 5, 7, 12, 14, 19, 21, 26, 28
Whitechapel, 1, 6, 8, 13, 15, 20, 22, 27, 29

Circuit 40—Middlesex.
His Hon. Judge Thompson, K.C.
His Hon. Judge Drucquer (Add.)
His Hon. Judge David Davies, K.C. (Add.)
Bow, 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28

Circuit 41—Middlesex.
His Hon. Judge Earengey, K.C.
His Hon. Judge Hancock (Add.)
Clerkenwell, 1, 4, 5 (J.S.), 6, 7, 8, 11, 12 (J.S.), 13, 14, 15, 18, 19 (J.S.), 20, 21, 22, 25, 26 (J.S.), 27, 28, 29

Circuit 42—Middlesex.
His Hon. Judge Sir Hill Kelly
Bloomsbury, 1 (J.S.), 4, 5, 6, 7, 8, 11, 12, 13, 14, 15 (J.S.), 18, 19, 20, 21, 22, 25, 26, 27, 28, 29 (J.S.)

Circuit 43—Middlesex.
His Hon. Judge Drysdale Woodcock, K.C.
His Hon. Judge Drucquer (Add.)
Marylebone, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28

Circuit 44—Middlesex.
His Hon. Judge Sir Mordaunt Snagge
His Hon. Judge Dumas (Add.)
Westminster, *Daily (except Saturdays)*

Circuit 45—Surrey.
His Hon. Judge Haydon, K.C.
His Hon. Judge Hurst (Add.)
*Kingston, 1, 5, 8, 12, 15, 19, 22, 26
*Wandsworth, 4, 6, 7, 11, 13, 14, 18, 20, 21, 25, 27, 28, 29

Circuit 46—Middlesex.
His Hon. Judge Drucquer
*Brentford, 4, 7, 11, 14, 18, 21, 25, 28
Willesden, 1, 5, 6, 8, 12, 13, 15, 19, 20, 22, 26, 27, 29

Circuit 47—Kent, etc.
His Hon. Judge Wells
His Hon. Judge Hurst (Add.)
*Greenwich, 1, 6, 8, 15, 20, 22, 29
Southwark, 4, 5, 7, 11, 12, 14, 18, 19, 21, 25, 26, 28
Woolwich, 13, 27

Circuit 48—Surrey, etc.
His Hon. Judge Konstam, C.B.E., K.C.
Dorking, 14
Epsom, 6, 12, 20
*Guildford, 7, 21
Horsham, 19
Lambeth, 1, 4, 5, 8, 11, 15, 18, 22
Redhill, 13

Circuit 49—Kent.
His Hon. Judge Clements
Ashford, 4
*Canterbury, 12
Cranbrook, 18
Deal,
*Dover, 13
Faversham, 11
Folkestone, 7
Hythe, 29
*Maidstone, 8
Margate, 14
†Ramsgate, 6
†*Rochester, 20, 21
Sheerness, 28
Sittingbourne, 19
Tenterden,

Circuit 50—Sussex.
His Hon. Judge Austin Jones
His Hon. Judge Archer, K.C. (Add.)
Arundel, 29
Brighton, 1, 7, 8 (J.S.), 14, 15 21, 22, 28
†*Chichester, 20
*Eastbourne, 13, 27
*Hastings, 12, 26
Haywards Heath, 6
*Lewes, 25
Petworth,
Worthing, 5, 19

Circuit 51—Hampshire, etc.
His Hon. Judge Lailey, K.C.
Aldershot,
Basingstoke, 4
Bishops Waltham,
Farnham, 15, 16, 22
*Newport,
Petersfield,
†*Portsmouth, 4 (B.), 7, 14, 21, 28
Romsey,
Ryde, 6
†*Southampton, 5, 11, 19, 20 (B.), 26
*Winchester, 13

Circuit 52—Wiltshire, etc.
His Hon. Judge Jenkins, K.C.
*Bath, 7 (B.), 14 (B.)
Calne, 9
Chippenham, 15
Devizes, 11
*Frome, 1 (B.)
Hungerford,
Malmesbury, 14 (R.)
Marlborough, 19
Melksham,
*Newbury, 13 (B.)
*Swindon, 6, 20 (B.)
Trowbridge, 8
Warminster, 4
Wincanton, 22

Circuit 53—Gloucestershire, etc.
His Hon. Judge Kennedy, K.C.
Alcester, 20
*Cheltenham, 12, 13 (J.S.), 26
Cirencester, 7
Dursley, 14
†*Gloucester, 11, 25
Newent, 19
Newnham,
Northleach, 9
Redditch, 1
Ross, 15
Stow-on-the-Wold, 27
Stratford-on-Avon, 21
Stroud, 5
Tewkesbury, 18
Thornbury, 4
Warwick, 22
Winchcombe, 16

Circuit 54—Somersetshire, etc.
His Hon. Judge Wethered
†*Bridgwater, 15
†*Bristol, 4 (J.S.), 5, 6, 7, 8 (B.), 11 (J.S.), 12, 13, 14, 22 (B.), 25 (J.S.), 26, 27, 28, 29
Minehead, 26 (R.)
*Wells, 19
Weston-super-Mare, 20, 21

Circuit 55—Dorsetshire, etc.
His Hon. Judge Cave, K.C.
Andover, 20 (R.)
Blandford, 18 (R.)
*Bournemouth, 7 (R.), 22 (J.S.), 25, 27 (R.), 28
Bridport, 26
Crewkerne, 12 (R.)
*Dorchester, 1
Lymington, 12 (R.)
†Poole, 6, 20 (R.)
Ringwood,
*Salisbury, 7
Shaftesbury, 4
Swanage,
*Weymouth, 5
Wimborne, 19
*Yeovil, 14

Circuit 56—Kent, etc.
His Hon. Judge Sir Gerald Hurst, K.C.
Bromley, 6, 15, 20, 29
*Croydon, 4, 5, 8, 12, 13, 25, 26, 27
Dartford, 7, 22
East Grinstead, 19
Gravesend, 11
Sevenoaks, 18
Tonbridge, 28
Tunbridge Wells, 21

Circuit 57—Devonshire, etc.
His Hon. Judge Thesiger
Axminster, 18
†*Barnstaple, 26
Bideford, 27
Chard, 19
†*Exeter, 14, 15
Honiton,
Langport, 14 (R.)
Newton Abbot, 21
Okehampton,
South Molton, 28
Taunton, 11
Tiverton, 20
*Torquay, 12, 13
Torrington,
Totnes, 22
Wellington, 7

Circuit 58—Essex.
His Hon. Judge David Davies, K.C.
Brentwood, 12 (R.)
Grays Thurrock, 19 (R.)
Ilford, 4 (R.), 5, 11 (R.), 18 (R.), 25 (R.), 26
*Southend, 1, 13 (R.B.), 20, 21 (R.), 22, 27 (R.)

Circuit 59—Cornwall, etc.
His Hon. Judge Lias
Bodmin,
Camelford,
Falmouth, 12
Helston,
Holsworthy,
Kingsbridge, 8
Launceston,
Liskeard, 21 (R.)
Newquay, 11
Penzance, 13
†*Plymouth, 5, 6, 7
Redruth, 14
St. Austell, 18 (R.)
Tavistock, 4
†*Truro, 15

†The Mayor's and City of London Court.
His Hon. Judge Dodson
His Hon. Judge Whiteley, K.C.
His Hon. Judge Thomas
His Hon. Judge Beazley
Guildhall, 1 (J.S.), 4, 5, 6, 7, 8 (J.S.), 11, 12, 13 (A.), 14, 15 (J.S.), 18, 19, 20 (A.), 21, 22 (J.S.), 25, 26, 27 (A.), 28, 29 (J.S.)

* = Bankruptcy Court
† = Admiralty Court
(R.) = Registrar's Court only
(J.S.) = Judgment Summonses
(B.) = Bankruptcy only
(R.B.) = Registrar in Bankruptcy
(Add.) = Additional Judge
(A.) = Admiralty

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that, neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Will—Settlement—Cesser of Settlement by Death of Life Tenant—Reversion partly Absolute and partly in Undivided Shares—Duties of Personal Representative of Tenant for Life.

Q. 3553. A testator who died in 1916 devised two small freehold dwelling-houses to A for life, and upon her death devised one of the dwelling-houses to B absolutely and the other dwelling-house to C absolutely. B is still living, but C died in 1922 intestate, leaving her father, her next-of-kin, her surviving. The father of C died in 1929, and by his will devised his residuary estate (which included the above mentioned dwelling-house devised to C) to his three children and the children of a deceased child in equal shares. One of the children of a deceased child is still an infant. The executors and trustees of the father's will are living. A, the tenant for life, died last year, and a general grant of administration of her estate has been obtained, and we have submitted to her administratrix's solicitors a draft form of assent to the vesting of the above-mentioned two dwelling-houses in the trustees of the will of the testator upon the trusts of the said will, but the solicitors refuse to approve of the draft and contend that it is the duty of their client as administrator of the tenant for life's estate to vest each dwelling-house in the remainderman entitled thereto. We agree that the administrator has power to do so but is under no *duty* to do so unless she wishes to take upon herself the duties of a trustee of the will of the testator, and that as the trustees have called for an assent she ought to execute it. The two houses have been built together on a small piece of land by the testator, and it is quite likely that they will be sold shortly as one property, and it is considered that it will be more convenient for the trustees to convey the property in one lot at the request of B and the executors of the will of the father of C.

A. In the case of the devise in remainder to B we are unable to see any justification for the suggestion that the general personal representative of the tenant for life should execute an assent in favour of the trustees of the will of the testator. From the particulars of the will before us it appears that those trustees have no duties to perform, and regarded as personal representatives they can have no claim to an assent, for they must have assented to the devise for life and over, otherwise the legal estate would not be in the personal representative of the tenant for life. An assent by conduct pre-1926 in respect of a life interest amounts also to an assent in respect of the remainder (*Stevenson* v. *Mayor of Liverpool* (1874), L.R. 10 Q.B. 81). In the case of the property now passing to B we therefore submit that the administratrix should assent direct to B (see also S.L.A., 1925, s. 7 (5)). In the case of the other house (C's), we suggest that the position is regulated by S.L.A., 1925, s. 36, that is to say, the administratrix of A should (at the cost of the trust estate) assent to the vesting of the house in the trustees of the settlement (that is, the settled land trustees) upon the statutory trusts. We assume that the father of C was not only her next-of-kin but also her heir-at-law. If the two houses are likely to be sold at an early date, would it probably not be more convenient and less costly to permit the administratrix of A to have the conduct of the sale? With regard to C's house, it should be ascertained whether his personal representatives have any claim thereon. If they have any such claim, then the assent should be in their favour. We suggest that they should be joined in any assent in favour of the settled land trustees to record that it is made with their approval.

Costs—Separation Order—Husband's Liability.

Q. 3554. It has been stated that a husband, against whom successful proceedings for a separation order are brought by his wife before the justices, is liable for the wife's costs of and incidental to the application—on the principle of same being in the nature of "necessaries." Will you please state if this be so, and quote any authority in support. If the husband is so liable, it is assumed that there is no necessity to apply to the justices for an advocate's fee at the hearing, as the wife's solicitor could prefer an item bill against him in due course, under Sched. 2 of the Solicitors' Remuneration Order.

A. The order would, presumably, be made by virtue of the Summary Jurisdiction (Married Women) Act, 1895, as amended by subsequent enactments. Section 5 (*d*) of the Act gives the court of summary jurisdiction power to make an order containing a provision for payment by the applicant or the husband or both of them of the costs of the court, and such reasonable costs of either of the parties as the court may think fit. It is clearly contemplated here that the wife may herself be ordered to pay the costs not only of the court but also of the husband, whilst it would appear to follow as a natural consequence that if the husband is the unsuccessful party, in the normal course of events, the costs would be awarded against him. In any case, it seems that the provision for costs must be contained in the order, and, moreover, the amount of the costs must be stated. Omission to have such a provision incorporated in an order would seem to prevent the wife recovering, and it is unlikely that such costs would be treated as "necessaries." Further, some action would have to be taken to determine this point, which would itself involve further expense, probably out of proportion to the amount involved. It will be seen from the above that there is no question of the husband being liable as a matter of inference. The question of costs is within the jurisdiction of the justices, and it is for them to determine by whom the costs are to be paid, and the amount thereof.

Whether an *ex-officio* Trustee can be Appointed under the Statutory Power of Appointment.

Q. 3555. The writers, in September, 1926, drew a trust deed, whereby a gentleman transferred to three individuals a sum of £2,000 to found scholarships for boys attending a secondary school, and the deed provided that the said three trustees and the survivors and survivor of them and the personal representatives of such survivor, or other the trustees or trustee for the time being of the deed (all of whom were thereinafter included in the expression "the trustees or trustee"), should hold the £2,000 upon the trusts therein set forth. The deed further provided that the power of appointing a new trustee or new trustees conferred by the Trustee Act, 1925, should apply to the deed and should be exercisable by the donor during his life. The donor has been dead some years. One of the three trustees has died, leaving two trustees surviving. The two surviving trustees desire to appoint the headmaster from time to time of the school under the words "and an *ex-officio* trustee consisting of the headmaster for the time being of the —— Boys County School." Can the surviving trustees appoint as an *ex-officio* trustee the headmaster for the time being of the school? If so, this would

be an appointment in perpetuity of an individual. The only bodies which can be appointed in perpetuity are the Public Trustee, banks, insurance and trust companies.

A. We do not think that the appointment can be made under the statutory power. The statutory power is confined to the appointment of "one or more other persons" (T.A., 1925, s. 36 (1)). While corporate bodies can be appointed under the power (*In re Thompson's Trusts* [1905] 1 Ch. 229), we know of no authority to justify the appointment of an *ex-officio* trustee.

The Designation of an Individual by Reference to his Office (and not by his Name) will not enable subsequent Holders of the Office to Deal with Property or Securities vested in him.

Q. 3556. A local association of churches of a religious denomination arranges for a loan from its funds, to be secured by mortgage. Solicitors are instructed to prepare the mortgage to "the treasurer for the time being" of the association—in view of a recent resolution of the association that all securities belonging to or held in trust by the association be transferred to "the treasurer for the time being" (passed with the view of avoiding the trouble of deeds being executed by the trustees, and of enabling any treasurer for the time being to deal with securities). Is it not essential that a party to a deed be *named*, and that (although the present treasurer of the association may be described as "the treasurer for the time being" in the proposed mortgage) the treasurer as mortgagee should be named? Although that would involve a transfer by him or his personal representatives to a succeeding treasurer (if the mortgage is not paid off during the present treasurer's tenure of office), it is not seen how that can be avoided—notwithstanding that it is the desire of the association that all securities vested in any treasurer should automatically pass to his successor.

A. We do not think it is essential that a party to a deed be named (by Christian and other names) and we are of opinion that he may be designated by reference to an office which he holds. Thus Mr. A could be party to a deed by the description of the treasurer for the time being of the association (if he holds that office). No useful purpose would be served, however; on the contrary, it would be inconvenient, for it would be necessary to prove that he was the treasurer at the material date upon any future dealing. Further, the mere resolution of the association could not render the treasurer a sort of corporation sole, and upon each change of treasurer a transfer would be needed either by the outgoing treasurer to the new, or by the personal representatives of a deceased treasurer to his successor in office. To give the treasurer the status of a corporation sole would need an Act. It will be seen that we are in agreement with the views expressed by our subscribers.

Preservation of Assets.

Q. 3557. A client of mine paid out moneys on behalf of a company after a resolution had been passed that the company be voluntarily wound up by the creditors. The payments were made in order to preserve the assets of the company, as, if my client had not made the payments, the property of the company would have deteriorated. My client submitted the proof for the payments which he made after the resolution for the winding up to the liquidator, who rejected the proof. My submission is, that as these payments were made for the preservation of the property, and would most certainly, or should, have been made by the liquidator, my client is entitled to prove for these payments as a debt in winding up. I shall be obliged if you will kindly let me have your views on this point, and, if possible, any decided cases.

A. The beneficent motives of the questioner's client did not have the effect of creating a liability in his favour. There was no consideration to support any claim in contract, and there is no implied liability under which the liquidator must accept the proof. A claim for salvage services can arise under maritime law only, and there is no corresponding provision in company law.

Mortgage Appropriated by Administrator to his own share in 1891—Release by other Beneficiaries.

Q. 3558. On the death of A in 1889, intestate, his personalty, including a mortgage debt secured on freehold land, became divisible amongst his next of kin. The administrator was B, one of the next of kin. By a deed of release to the administrator, executed by the next of kin in 1891, it was stated that an agreement had been made to divide the intestate's estate in accordance with the schedule to the deed, which schedule showed that the said mortgage debt was appropriated towards the share of B and since then B received the interest. B is now dead and C is his surviving executor. Is it necessary for C to take any steps to complete his title as it is desired to transfer the mortgage debt and security?

A. The debt of course rested in B as administrator and the freehold security vested in him by virtue of s. 30 of the Conveyancing Act, 1881. When the administration, other than the actual division of the assets, was concluded, B would be in the position of a trustee (*Re Pitt*, *Pitt* v. *Mann* (1928), 44 T.L.R. 371). The opinion is given that the release had the effect of vesting the debt and security in B beneficially and that with the release a good title can be made. Indeed, after this lapse of time, the present writer would have accepted the title of B's executor on the ground that if B was not beneficially entitled he must have become a trustee (as opposed to a mere administrator) and consequently on his death the security and debt must pass to his personal representative.

Settlement on Infant Child.

Q. 3559. A proposes to execute an irrevocable deed of trust, settling the sum of £10,000 upon his infant son. The settlement will contain directions that the income from the trust fund is to be accumulated at compound interest in augmentation of the capital until the son is twenty-five years of age and thereafter to pay the income to the son for his life and, on his death, the capital to be equally divided between the son's children then living.

(1) What will be the settlor's position under the provisions of s. 21, Finance Act, 1936? Can it be contended—(A) that in view of the directions to accumulate the income such income is not to be deemed part of the settlor's income for income and sur-tax purposes, (B) that the position is not affected by the child attaining the age of twenty-five for then he will no longer be a child.

(2) It has been suggested that the settlement should also contain a provision enabling the trustees in their sole discretion to apply capital or accumulations of capital towards the maintenance and education of the child until he is twenty-five. Would that make any difference?

A. According to our reading of s. 21 of the Finance Act, 1936, if there is an irrevocable settlement of invested funds with an absolute direction to accumulate, in the manner first mentioned, the income will not be deemed part of the settlor's income for sur-tax, though, of course, it will bear the full income tax not as the settlor's income but as income of the trustees of the settlement. If, however, there is a power to apply the income or accumulations, the provisions of sub-s. (2) would apply. The opinion is hazarded that there would be no objection to making the income applicable to the child if the settlor died before the child attained twenty-five. With a settlement of the amount mentioned it is considered the solicitors concerned would be fully justified in having the settlement settled by counsel.

To-day and Yesterday.

LEGAL CALENDAR.

20 JUNE.—A curious light on former legal practices is thrown by some of the Parliamentary proceedings during the passing of the Act "for enabling Lords Commissioners of the Great Seal to execute the office of Lord Chancellor" just after the Whig Revolution of 1688. A clause was added in the Lords to forbid the sale of the office of Master in Chancery, but this was too much for the Commissioners, particularly Serjeant Maynard, and, after a conference between the two Houses on the 20th June, 1689, it was dropped.

21 JUNE.—On the 21st June, 1786, Madame de La Motte, having been convicted of playing a leading part in the great Diamond Necklace fraud which had brought scandal to the name of Queen Marie Antoinette, was carried to execution. She had been sentenced to be publicly branded, but, so violent were her struggles as she rolled on the ground uttering all manner of imprecations that it required all the skill of the executioner to execute his office, and in the end she was burnt in three places. Then she was carried back to prison where she had been condemned to pass the rest of her days.

22 JUNE.—On the 22nd June, 1894, a week after his death, the body of Lord Coleridge was carried to Westminster Abbey for the memorial service there.

23 JUNE.—A little nest of Dodson & Fogg attorneys was brought into the light of day on the 23rd June, 1845, when Henry Gompertz, an operator in the financial underworld, William Witham, an attorney of 8, Gray's Inn Square, and Robert Witham, his son and colleague, stood charged in the Court of Queen's Bench with conspiring to defraud Captain George Rose, of the 9th Lancers, in a bill swindling transaction which ran into thousands of pounds. Hovering on the outskirts of the operation had been another attorney of 12, Bedford Row, called William Henry Smith, who purported to act for a non-existent financier called "Parker." Gompertz and Witham, junior, were convicted, but the latter was recommended to mercy on the ground of his youth and his father's negligence in the conduct of his business. Evidently Witham, senior, took warning, for next year's Law List shows him migrated from Gray's Inn to go into partnership with Smith.

24 JUNE.—On the 24th June, 1903, Tim Healy, long eminent as a Member of Parliament, and an Irish K.C., was called to the Bar at Gray's Inn. He began his speech in Hall with the words: "Unaccustomed as I am to public speaking," and expressed the hope that allowances would be made for a barrister of only one and a half hours' standing. When he was first admitted a student of the Inn, twenty-three years before, he said, the wine and he were young. The wine, he noticed, had much improved since he joined.

25 JUNE.—On the 25th June, 1674, Sir Orlando Bridgman died at Teddington, where he lies buried. Everyone acknowledges his piety, his moderation, his learning, his honesty and his amiability. It is a pity, therefore, that late in life political forces removed him from the Common Pleas where he had made a good reputation as Chief Justice and set him down among the thorny and unfamiliar problems of the Court of Chancery, where he can hardly be said to have distinguished himself as Lord Keeper.

26 JUNE.—Sir Joseph Littledale died on the 26th June, 1842, about a year after his resignation from the Court of Queen's Bench. He was one of the last judges to adhere to the old fashion of wearing his wig out of court. This and a hat with a brim of prodigious breadth made him a quaintly conspicuous figure in the legal quarter. He was a good judge with an unusually ready knowledge of case law and text-books. He never tired of work and enjoyed the longest day's argument.

THE WEEK'S PERSONALITY.

On the 22nd June, 1894, the body of Lord Chief Justice Coleridge was carried to Westminster Abbey. On the coffin lay his robe of scarlet and ermine and the gold collar of S.S. Lord Herschell, the Lord Chancellor, led the pall bearers, among whom walked Lord Halsbury and the Judges of the High Court followed in procession. Then he was carried back to rest in his native Devon. On the wall of the little church at Alphington which he and his father had endowed a memorial stone was placed bearing the words: "He Served the Law. He Sought the Truth. He Loved Liberty." And that, indeed, is a fair epitome of his public career. He was a many-sided man, enthusiastic, communicative and warm-hearted, carrying everywhere the polished bearing of a high-bred gentleman. His method was always *suaviter in modo*, but on occasion with an appearance of the utmost gentleness, he could convey a wounding satirical stab, for he was essentially a wit. As an orator and an elocutionist his greatest asset was a beautiful voice. Someone said of him once: "I should enjoy listening to Coleridge even if he only read out a page of Bradshaw." In fourteen years he proved himself one of the great Chief Justices.

PROPER CLOTHES.

Homage to the dignity of advocacy was recently paid at some personal inconvenience by a solicitor attempting to appear at Warminster County Court when His Honour Judge Jenkins refused to hear him so long as he wore a grey suit. In the space of a quarter of an hour's adjournment, he succeeded in achieving visibility and audibility by borrowing from a brother practitioner a dark blue suit which, though some sizes too large, assured the vindication of principle, since advocates exist not for the court unless properly habited. This even the future Bargrave Deane, J., once discovered, as an eminent leader, when happening to be in court unrobed, he attempted to intervene on a momentary impulse in some matter in which he had an interest, only to be told by Barnes, J.: "You're invisible to me, Mr. Deane." A story I like very much concerns a member of the French Bar who, during a Paris heat wave discarded his black clothes and white cravat and appeared in court in white trousers and a black cravat. "Sir," said the magistrate severely, "the court invites you to put your trousers round your neck and your cravat on your legs."

UNRECOGNISED CELEBRITY.

When during a recent case Wrottesley, J., ordered an aged baronet from Sunderland to leave the court until he was in a proper frame of mind to listen to the other side without interrupting, the gentleman ejected waxed indignant. "The judge doesn't know I am one of the best-known men in Sunderland," he complained. "He is treating me as if I had no standing." Whether or not Wrottesley, J., is familiar with the local celebrities of the County of Durham, it is hard to see how else he could have acted towards a man who insisted on exclaiming loudly: "It's lies!" during the opening of his opponent's case. The complaint recalls a story of how Lord Chief Justice Tenterden was once betrayed into an embarassing situation. A witness in his court began his evidence with his face turned away from the bench, and the judge roughly bade him "hold up your head and speak out like a man." Those present were amused at the change in his tone when the witness turned on him the face of the Chairman of the Honourable East India Company. My favourite story of mistaken identity concerns a member of the Bar who at a social function started abusing a certain Attorney-General to his wife. She had been introduced to him as "Mrs. Attorney." He had thought the introducer had said "Mrs. Turner."

Notes of Cases.

Judicial Committee of the Privy Council.

Attorney-General for the Isle of Man *v.* Moore.

Lord Maugham, L.C., Lord Wright, and Lord Roche.
27th May, 1938.

ISLE OF MAN—MINERALS ON ESTATE—STATUTORY RESERVATION OF SLATE OR STONE TO CROWN—SHALE—WHETHER INCLUDED.

Appeal by the Attorney-General for the Isle of Man from an order of the Staff of Government Division of the High Court of the Isle of Man, affirming an order of his honour the Deemster Farrant in the Chancery Division of the High Court.

Deemster Farrant dismissed an information presented by the Attorney-General on behalf of his Majesty against the respondent Emily Moore, the holder of the Raggatt estate, a Manx customary estate of inheritance, for declarations, *inter alia*, that shale within that estate was within the reservation of slate or stone in the Act of Settlement of 1704, and that his Majesty and his grantees and lessees had the right to enter on the Raggatt estate and work and carry away the shale.

LORD WRIGHT, delivering the judgment of the Board, said that the appeal raised an important question on the construction of the Act of Tynwald, known as the Act of Settlement of 1703-04. Their lordships, on the whole case, saw no reason to differ from the finding of fact of Deemster Farrant, based on a careful and exhaustive examination of the evidence, that shale such as that now in question could not have been described as slate by mining experts, commercial men, or landowners either in 1703-04 or to-day, or to differ from his similar finding that it would not have been included in a description of stone by any of the same classes of persons. Those findings of fact, which their lordships accepted, were fatal to the appellant's case, and the appeal would be dismissed.

COUNSEL: *R. B. Moore, Attorney-General for the Isle of Man, H. O. Danckwerts*, and *G. D. Hanson*, for the appellant; *R. Evershed*, K.C., *K. Johnston*, and *S. J. Kneale*, for the respondent.

SOLICITORS: *The Official Solicitor, Commissioners of Crown Lands; Linklaters & Paines.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Appeal.

Caswell *v.* Powell Duffryn Associated Collieries, Ltd.

Greer, Slesser and MacKinnon, L.JJ.
12th May, 1938.

MINES AND MINERALS—FENCING OF DANGEROUS MACHINERY—WORKMAN DRAWN INTO MACHINERY—FENCE MOVED—LIABILITY—COAL MINES ACT, 1911 (1 & 2 Geo. 5, c. 50), s. 55.

Appeal from a decision of Humphreys, J.

Certain dangerous machinery operating a conveyer belt in a coal mine was fenced, part of the fencing being removable for the purpose of cleaning. When the machine was cleaned, it was necessary for safety that it should be at a standstill. When necessity arose, the workman, whose duty it was to clean it, caused the engineman to stop it and it could then only be started again with his authority. On the day in question, the man was found dead, having been drawn into the machine. The fencing, which was then out of place, had been in place when he commenced his duties in the morning. No other workman had been concerned in that place. The engineman had not been called on by the workman to stop the machinery for the purpose of cleaning. The machinery had, however, been stopped at certain intervals for periods of about fifteen minutes while full trucks were emptied and replaced by empty ones. When this operation was complete, the machinery might be started again without warning. There was evidence that a permitted method of cleaning was to employ the period of the stoppage. Humphreys, J., dismissed an action by the dependants of the deceased against the mine owners for damages. There was an appeal.

GREER, L.J., dismissing the appeal, said that the Coal Mines Act, 1911, s. 55, imposed an absolute duty on employers to see that dangerous machinery in a mine should be kept properly fenced, the fence to be kept in operation so long as the machinery remained in a dangerous state. It had been said that there was enough evidence that the accident could not have happened without negligence on the part of the deceased. In the circumstances, the conclusion could not be avoided that he had been guilty of some negligence or want of reasonable care. The court should follow the opinion expressed in *Craze* v. *Meyer-Dunmore Bottlers' Equipment Co., Ltd.* [1936] W.N. 217; 80 SOL. J. 552, that the standard of negligence in the case of a workman was the same as in the case of anyone else. He was negligent if he did something which a reasonably prudent workman in his position would not do, or omitted something which a reasonably prudent workman would do. There was enough evidence to justify the conclusion that without negligence on the man's part, the accident could not have happened. The employers could also rely on s. 102 (8) of the Act. The only way they could have prevented such an accident would have been by having a manager or under-manager present at any time when it became necessary to clean the rollers. That was impracticable.

SLESSER, L.J., dissented, considering that the deceased might have been cleaning the machinery in an interval of stoppage when it was re-started.

MACKINNON, L.J., agreed with GREER, L.J.

COUNSEL: *Fyfe*, K.C., and *J. D. Davies; Hunter*, K.C., and *G. V. Parsons.*

SOLICITORS: *Smith, Rundell, Dods & Bockett*, for *Morgan, Bruce & Nicholas*, of Pontypridd; *Furniss & Co.*, for *A. J. Prosser*, of Cardiff.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Newsome *v.* Darton Urban District Council.

Greer, Slesser and MacKinnon, L.JJ.
30th May, 1938.

HIGHWAYS—HIGHWAY AND SANITARY AUTHORITY—TRENCH DUG FOR DRAINAGE—FILLED IN—SUBSIDENCE—ACCIDENT TO CYCLIST—LIABILITY.

Appeal from a decision of Atkinson, J.

The defendants, who were both the highway and sanitary authority for a certain area, caused a trench to be dug in a road in 1933 to connect the drains of certain houses with a sewer. The work which was performed by sub-contractors was passed by the defendants. After the trench was filled in certain subsidences occurred and were made good. In August, 1935, the road was tar-sprayed and chippings were rolled in. Soon after, the road ceased to be level and by August, 1936, there was a subsidence ending in a hole dangerous to the public. A cyclist who was thrown from his bicycle and injured as a result of the subsidence brought an action for damages. The jury found that the trench was dangerous to persons using the highway, that the condition of the road was the result of work done by or on behalf of the defendants, that the original work was not negligently done and that the defendants were negligent in not taking steps to remedy the danger. Atkinson, J., gave judgment for the plaintiff.

GREER, L.J., dismissing the council's appeal, said that a highway authority could not be sued in respect of failure to

keep its roads in order (*Russell* v. *Men of Devon*, 2 Term Rep. 667). Unless the obligation broken was an obligation on a public body in respect of powers which they had otherwise than as a road authority they could not be liable for mere non-feasance. Once a sanitary authority made a hole in a road for sanitary purposes, the obligation was put on them to fill it up properly and subsequently to maintain it by the exercise of reasonable care and reasonable supervision. Unless a time had come when the tribunal of fact could state that there was no longer any danger in that part of the road dealt with, the sanitary authority's obligation to exercise reasonable care was to see that the roadway in the place where the authority originally made the hole was maintained in a safe condition. His lordship referred to *Skilton* v. *Epsom and Ewell Urban District Council* [1937] 1 K.B., at p. 127, and said that where the making of a hole by a sanitary authority resulted in a state of affairs necessitating examination of the roadway from time to time to see that what had been done had not resulted in an unsafe condition of the roadway, they were still liable for that which was found to be the consequence of the failure to exercise reasonable care. His lordship read *Shoreditch Corporation* v. *Bull*, 90 L.T. 210, as meaning that where there was something which might be regarded as non-feasance by a local authority which happened also to be a local authority the action would lie for what they had done not as a road authority but in some other capacity.

SLESSER and MACKINNON, L.JJ., agreed.

COUNSEL: *Jardine*, K.C. and *Streatfeild*, K.C.; *H. Malone* and *Glyn-Jones*.

SOLICITORS: *Corbin, Greener & Cook* for *Dibb & Clegg*, of Barnsley; *Kingsley Wood, Williams & Murphy*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Beattie *v.* E. & F. Beattie Ltd. and Another.

Greene, M.R., Scott and Clauson, L.JJ.
1st and 2nd June, 1938.

COMPANY—SHAREHOLDER'S ACTION AGAINST COMPANY AND DIRECTOR — REPRESENTATIVE CAPACITY — ARBITRATION CLAUSE IN ARTICLES OF ASSOCIATION—DISPUTE BETWEEN COMPANY AND ANY MEMBER—DIRECTOR'S APPLICATION TO STAY ACTION—COMPANIES ACT, 1929 (19 & 20 Geo. 5, c. 23), s. 20.

Appeal from a decision of the Vice-Chancellor of the County Palatine of Lancaster.

The issued shares of a private company were 3,228 ordinary shares. The plaintiff, M.B., held half, i.e., 1,614 shares. The defendant, E.B., held 1,514 shares, and his son, who was not a party to this action, held 100 shares. The two directors of the company were M.B. and E.B., who was chairman, but had no casting vote. By art. 133 of the company's articles of association: "Whenever any doubt, difference or dispute shall arise between any members of the company or between the company and any member or members (and for the purposes of this article the word 'member' shall include any person claiming through or under a member) . . . or on any other account, matter or thing, in any way connected with the company or the conduct, affairs, business or interest thereof or any act or default of the directors or any of them, the members of the company respectively shall not take proceedings at law in respect of such doubt, difference or dispute, but the same shall be referred to two arbitrators or their umpire" pursuant to the Arbitration Act, 1889. In December, 1936, M.B., suing in her representative capacity as a shareholder, brought an action against the company and E.B., the endorsement on the writ relating to (1) a question of her right to inspect the books and accounts, and (2) a question as to a purported increase of capital and an allotment of new shares. (No question arose on these points and the action was continuing on them.) In December, 1937, the plaintiff applied for leave to amend her writ and statement of claim, so as to allege that the defendant E.B. had paid to his son certain sums by way of remuneration which under the company's regulations he was not entitled to pay. The defendant, E.B., then applied under s. 4 of the Arbitration Act, to have that part of the action stayed pursuant to the arbitration clause. The Vice-Chancellor held (1) on construction, that the dispute did not fall within art. 133, and (2) that if he was wrong on construction, E.B. could not rely on the article as constituting a contract between himself and the company, and so it could not be relied on as a submission to arbitration between him and the company for the purposes of s. 4. He accordingly dismissed the application.

GREENE, M.R., dismissing E.B.'s appeal, said that it was not suggested that there was any objection to the application on the ground of a step in the action having been taken, as the new matter was treated for the purpose of s. 12 of the Act as in effect a new action. The claim was made against E.B. in his capacity as director responsible for the proper application of the company's funds. The claim was and must be in a representative action of this character a claim of the company itself, as a minority shareholder suing in a representative action was suing to enforce the company's rights. The minority shareholder was not in a position to see that the action was brought in the name of the company itself to enforce its rights, but the action was in reality to enforce the company's rights and nobody else's. The company was a necessary defendant, because the order, if made, would be for payment to it. The Vice-Chancellor had held that in art. 133, disputes "between the company and any member or members" meant "in his or their capacity as member or members," so that a disputant who was a member, but was disputing in his capacity as director, was excluded from the class with which the clause was concerned. His lordship preferred to express no opinion as there was a clear answer to the appeal in the second matter dealt with. To bring himself within s. 4 of the Act, E.B. must point to a written agreement for submission to arbitration. It was not enough to rely on an agreement appointing him director which was merely to be inferred from conduct even if in such an agreement a term corresponding to art. 133 should be imported. An agreement so extracted from the general relationship of the parties was not enough. E.B. relied on s. 20 of the Companies Act, 1929, as giving the articles contractual force. He argued that art. 133 covered a dispute between the company and a member relating to an act or default of a director and that he and all other members had a right when they found the company disputing with a director to insist on a reference to arbitration. It was said that it was immaterial that the member demanding arbitration was himself the director attacked. But the contractual force given to the articles by s. 20 was limited to such of their provisions as applied to the relationship of the members in their capacity as members. In this his lordship did not depart from certain observations in *Hickman* v. *Kent and Romney Marsh Sheep Breeders' Association* [1915] 1 Ch., at pp. 897, 900. E.B. was not seeking to enforce a right to call on the company to arbitrate a dispute which was only accidentally a dispute with himself. He was asking as a disputant to have the dispute to which he was a party referred. That differentiated it from the right common to all other members under art. 133.

SCOTT and CLAUSON, L.JJ., agreed.

COUNSEL: *Cleveland-Stevens*, K.C., and *R. A. Forrester*; *Roxburgh*, K.C. and *Harold Brown*.

SOLICITORS: *Cunliffe & Airy* for *Lee, Scott, Start & Mottershead*, of Manchester; *T. J. Smith & Son*, of Liverpool.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

McCalmont *v.* **Inland Revenue Commissioners.**

Greene, M.R., Scott and Clauson, L.JJ.
2nd June, 1938.

Revenue—Super Tax—Taxpayer Resident in United Kingdom and Irish Free State—Double Taxation—Relief—Finance Act, 1920 (10 & 11 Geo. 5, c. 18), s. 27—Relief in Respect of Double Taxation (Irish Free State) Declaration, 1923 (S.R. & O., 1923, No. 406).

Appeal from a decision of Lawrence, J.

During the year of assessment ending the 5th April, 1924, the respondent was resident in both the United Kingdom and the Irish Free State, becoming liable to pay income tax and super tax in both countries. His income for the year as assessed for purposes of income tax was £87,000. Having paid income tax on this amount in both countries, he obtained relief in the United Kingdom in respect of the double tax under the Finance Act, 1920, s. 27. In the same year, his statutory income for the purposes of super tax in both countries was £129,000, the amount of his total income for the previous year, 1922-3. He had paid super tax on that amount for that year in the United Kingdom but not in the Irish Free State, as there was in that year no Irish Free State super tax. He paid super tax for the year 1923-4 on that sum in both countries. Lawrence, J., held that he was entitled to relief in respect of the double tax.

Greene, M.R., dismissing the Crown's appeal, said that the relief given by s. 27 of the Act did not extend to super tax. His lordship then referred to the Irish Free State (Consequential Provisions) Act, 1922, s. 5 (1), and the Relief in Respect of Double Taxation (Irish Free State) Declaration, 1923, made thereunder, which declared that "under the laws in force in the Irish Free State, income tax, super tax, estate duty and stamp duties are payable in respect of subjects of charge in respect of which corresponding taxes are payable also in Great Britain," and that arrangements had been made with the Free State Government for granting relief where there was a charge both to British tax and Irish tax in respect of the same subject-matter. The arrangements were specified in a Schedule. Part I, para. (c), of the Schedule provided that "this arrangement applies to income tax (including super tax) for the year of assessment commencing on the 6th day of April, 1923, and subsequent years." That, read in the light of the declaration, meant: "Relief shall be allowed from British income tax and British super tax," but it was said that this construction was not permissible by reason of the following words: "in accordance with and under the provisions of s. 27 of the Finance Act, 1920." It was said that as s. 27 was confined to relief from British income tax, the relief to be granted under the arrangement did not extend to British super tax. But the true view was that the relief under s. 27 must be treated as extended to cover also British super tax. The other construction involved treating the declaration as having failed to carry out its expressed intention.

Scott and Clauson, L.JJ., agreed.

Counsel: *The Solicitor-General* (Sir Terence O'Connor, K.C.) and *R. Hills; Needham*, K.C., and *Terence Donovan*.

Solicitors: *Solicitor of Inland Revenue; William Easton & Sons*.

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re **Hodgson's Settlement; Brookes** *v.* **Attorney-General.**

Farwell, J. 31st March and 25th May, 1938.

Death Duties—Estate Duty—Settled Fund—Payment of a Specified Sum out of Income to Life Tenant—Surplus Income Accumulated—Income of Accumulated Fund to be Paid to Life Tenant after Settlor's Death—Remainder to Life Tenant's Children—Settlor's Death—Duty on Accumulated Fund—Finance Act, 1894 (57 & 58 Vict. c. 30), ss. 2 (1) (*d*), 4.

In 1925, L.H. made a settlement of certain shares hitherto his property, he himself and one T.B. being trustees. Out of the income of the trust fund the trustees were to pay each year after deduction of income tax £1,200 to G.S. for life, subject to forfeiture therein mentioned. During the joint lives of G.S. and the settlor the residue of the income was to be accumulated by investing it and the resulting income thereof. If during the life of G.S. the income of the trust fund was insufficient to provide a clear sum of £1,000, the trustees were to make good the deficiency out of the accumulations fund as they thought fit. After the settlor's death the annual income of the accumulations fund was to be paid to G.S. during the rest of her life. After the death of G.S. the capital and income of both funds was to be held in trust for all or one or more of her children or remoter issue as she should by deed or will appoint, or in default of appointment for all her children who should attain twenty-one years, or being female marry under that age. This settlement did not dispose of the annual income of the trust fund, beyond the £1,200 payable to G.S., during the period between the settlor's death and her death; the accumulations having then ceased, a supplementary settlement was made in 1931 whereby this was given to T.B. absolutely. The settlor died in 1933, the trust fund still consisting of the original shares. The question arose whether estate duty was payable in respect of the accumulations fund under s. 2 (1) (*d*) of the Finance Act, 1894, on the amount of the difference between the value of the interest of G.S. therein after the settlor's death and her interest therein immediately before his death.

Farwell, J., said that after the settlements the settlor ceased to have any interest in the property save as trustee. The question was whether the life interests created took the case out of *Adamson* v. *Attorney-General* [1933] A.C. 257. This was answered by *Attorney-General* v. *Lloyds Bank, Ltd.*, 151 L.T. 268, whereby the interposition of life interests was not in itself sufficient to take the case out of the decision in *Adamson* v. *Attorney-General, supra*. Nothing in the decision of the House of Lords in the latter case amounted to an express disapproval or reversal of the former case. Though the question decided by the Court of Appeal in *Attorney-General* v. *Lloyds Bank, Ltd., supra*, was in a sense hypothetical, his lordship, sitting as a judge of first instance, did not consider it proper to disregard it. Therefore, the present case was within the principle of *Adamson* v. *Attorney-General, supra*, and as the property as a whole passed on the settlor's death, the estate duty was payable under s. 2 (1) (*d*).

The further question having arisen whether the amount of the difference mentioned in the first question should be treated as an estate by itself or should be aggregated with the settlor's other property for the purposes of s. 4 of the Act, this matter was then argued.

Farwell, J., referred to *Adamson* v. *Attorney-General, supra*, *Attorney-General* v. *Lloyds Bank, Ltd., supra*, and *Attorney-General* v. *Dickinson and Baron* [1937] 2 K.B. at p. 579, and said that there was no authority binding on him. The question was whether this was property in which the deceased had an interest. Here the property passing was not the property settled by the settlor, nor the whole of the beneficial interest in the fruit of that property. It was an annuity or other interest provided by the settlor to the extent of the beneficial interest accruing or arising. That interest, which was deemed to be property under s. 2 (1) (*d*), was an interest in which the settlor could never be said to have had an interest at all. He had an interest in the property which produced the income out of which the accumulations were to be made at the time when he made the settlement and before he parted with it. He had such rights as settlor as he would have in respect of a resulting trust, but the interest

which was the subject-matter of the sub-section was not property in which he ever had an interest. Therefore, this property was taken out of s. 4 and was not to be aggregated with the settlor's other property. The estate duty must be leviable on it as an estate by itself.

COUNSEL: *Radcliffe*, K.C., and *Mendel*; *J. H. Stamp*.

SOLICITORS: *Cannon Brookes & Odgers*; *Solicitor of Inland Revenue*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re **Hammond**; **Hammond** *v.* **Treaharne.**

Simonds, J. 1st June, 1938.

WILL — CONSTRUCTION — LEGACIES — AMOUNT STATED IN WORDS AND FIGURES—DISCREPANCY—EFFECT.

The will of the testator who died in 1935 contained the following legacies: "To the Carmarthen Infirmary the sum of Five hundred pounds (£500) to the Baptist Medical Mission the sum of Five hundred pounds (£500) to Miss May's Mission, Great Arthur Street, London, the sum of One hundred pounds (£500), to the Baptist Sustentation Fund the sum of Five hundred pounds (£500)." The question arose whether Miss May's Mission took £500 or £100

SIMONDS, J., said he would apply the maxim: "*Cum duo inter se pugnantia reperiuntur in testamento, ultimum ratum est*," Co. Litt. 112B. There was an intention to be attributed to a testator, though sometimes quite arbitrarily that where there were two inconsistent provisions in a will the latter should prevail. There was also a *primâ facie* rule that in the case of conflict between words and figures, the words should prevail, but that rule had only been applied in the case of commercial documents. That rule must give way to the context which here was favourable to the view that the testator intended a legacy of £500.

COUNSEL: *G. Upjohn*; *Timins*; *Wilfrid Hunt*.

SOLICITORS: *John T. Lewis & Woods*, for *Randell, Saunders & Randell*, of Llanelly; *Boulton, Sons & Sandeman*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Mason *v.* **Brewis Bros. Ltd.**

Hawke, J. 1st April, 1938.

LIBEL — PRIVILEGE — UNEMPLOYMENT INSURANCE — EMPLOYEE'S APPEAL TO COURT OF REFEREES AGAINST STOPPAGE OF PAYMENTS—LETTER BY EMPLOYERS TO LABOUR EXCHANGE GIVING REQUIRED PARTICULARS—EXTENT TO WHICH PRIVILEGED — UNEMPLOYMENT INSURANCE ACT, 1935 (25 & 26 Geo. 5, c. 8), s. 44.

Action for libel tried by Hawke, J., with a jury.

The plaintiff was a van driver who had been employed by the defendant company. Having left the defendants' employ, he applied for further employment to the local labour exchange. The labour exchange, having applied to the defendants for certain particulars relating to the plaintiff's employment with them, the defendants, by their managing director, wrote the labour exchange a letter in respect of which the plaintiff brought the present action against them and the managing director. The jury found that the letter was defamatory and malicious. It was contended for the defendants that the occasion on which the letter was written was absolutely privileged.

HAWKE, J., said that he accepted that, the labour exchange having stopped the plaintiff's payments, he appealed, or took steps to appeal, to the Court of Referees under the Unemployment Insurance Act, 1935. It was in the course of that proceeding that the defendants, having been asked to give certain information, wrote the letter in question. It was contended that the whole of the proceeding was to such an extent judicial that it was to the public advantage that everyone should be free to say what he liked, even to the extent of causing injury, and even though it were not true. That some privilege attached to the letter was not in dispute; the question was whether it was merely qualified or whether the occasion of it was one of absolute privilege. On the one hand, it might be considered a case where it was essential as a matter of public policy that everyone should be free to say what he pleased without fear. On the other hand, the subject of the communication might be entitled to certain rights and consideration, so that there should be freedom only to say, without malice, what was believed to be true. *Collins* v. *Henry Whiteway & Co.* [1927] 2 K.B. 578, decided with regard to the Unemployment Insurance Act, 1920, appeared to be in point, but counsel for the defendants contended that the effect of the change which had been made in the law by the Act of 1935 as to the power of the Court of Referees—(the matter was now regulated by s. 44 of the Unemployment Insurance Act, 1935)—was to abrogate *Collins* v. *Henry Whiteway & Co.* (*supra*). He (his lordship) was, however, not entitled to guess at the intention of the legislature. He must judge by the language, and there was nothing in that of the later Act to compel him to think that such a remarkable change as that suggested was intended. The Unemployment Insurance Acts of 1920 and 1935 both intended that there should be a final decision and that there should be a tribunal whose opinion should be indisputable. Horridge, J., was dealing with a communication which might ultimately go before a person whose decision in the proceedings before him would be final. He (Hawke, J.) felt bound, therefore, to follow Horridge, J.'s decision. It was true that the procedure was now somewhat shorter, but the legislature never intended the alteration in the law suggested. The decision of Horridge, J., was as much applicable under the Act of 1935 as under that of 1920, and the plaintiff was accordingly entitled to succeed.

COUNSEL: *Castle-Miller*, for the plaintiff; *P. Devlin*, for the defendants.

SOLICITORS: *Musson & Co.*; *W. T. Ricketts & Son*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Taylor *v.* **Richardson.**

Branson, Humphreys and du Parcq, JJ.
12th May, 1938.

SOLICITOR—TEMPORARY SUSPENSION FROM PRACTICE—NAME REMAINING ON ROLL—USE DURING SUSPENSION OF TITLE "SOLICITOR"—LEGALITY—SOLICITORS ACT, 1932 (22 & 23 Geo. 5, c. 37), s. 46.

Appeal by case stated from a decision of a Metropolitan magistrate.

An information was preferred by the appellant, Taylor, under the Solicitors Act, 1932, charging the respondent, Richardson, with having wilfully used a title or description implying that he was qualified to act as a solicitor when he had no practising certificate in force, contrary to s. 46 of the Act. At the hearing of the information the following facts were proved or admitted: Richardson was suspended from practice for two years by order of the Disciplinary Committee of The Law Society, but his name remained on the roll of solicitors. One, Ellis, who had known Richardson for some years, and knew that he was an admitted solicitor but not that he had been suspended from practice, called on Richardson in connection with his (Ellis's) desire to raise money on his reversionary interest in his father's will. Richardson handed Ellis a card bearing the name of the firm under which he had carried on business before suspension and which Richardson told Ellis was his firm. Subsequently Ellis visited Richardson at the address of that firm. Arrangements were made to discount a promissory note in consideration of a charge on Ellis's reversionary interest, and Richardson witnessed the deed of charge describing himself,

in so doing, as "solicitor." By s. 46 of the Solicitors Act, 1932, "Any person, not having in force a practising certificate, who wilfully pretends to be, or . . . uses any . . . description implying that . . . he is . . . recognised by law as qualified to act as a solicitor, shall be liable . . . to a penalty . . . " It was contended for the appellant, *inter alia*, that that section contained an absolute prohibition against the use of the description "solicitor" by a person suspended from practice, or who had not in force a practising certificate, even though his name remained on the roll. It was contended for the respondent, *inter alia*, that, as an admitted solicitor, he was entitled to describe himself as a "solicitor."

BRANSON, J., said that the magistrate had come to the conclusion that, since Richardson's name was on the roll of solicitors at the material time, and since it was not necessary that the deed of charge which he witnessed should be witnessed by a solicitor qualified to practise, his use of the title was not an infringement of the provisions of the Act, and he dismissed the information. In his (his lordship's) opinion that decision was wrong in law. When Ellis called on Richardson and said that he had come to see him on business, he was obviously being approached as a solicitor who was entitled to practise. When, at a further interview, Richardson handed Ellis the card with the name of the firm of solicitors on it, Richardson was using the title of "solicitor" to imply that he was qualified to act in that capacity. It was difficult to see, on looking at s. 46, what title, addition or description the legislature thought it likely that a man would use as implying that he was qualified to act as a solicitor, other than the description "solicitor." It was not to be expected that a man would be found describing himself as a "solicitor with a valid practising certificate" or a "solicitor qualified to act in that capacity." In his (his lordship's) opinion, if a man were approached on a matter of business, and described himself as a solicitor without any qualification of the word, he was holding himself out as a solicitor qualified, and recognised by law as qualified, to act as such.

HUMPHREYS and DU PARCQ, JJ., agreed.

COUNSEL: *R. P. Croom-Johnson*, K.C., and *W. M. Andrew*, for the appellant; *Harry Allan*, for the respondent.

SOLICITORS: *Hempsons; J. Thompson Halsall.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Knight *v.* Sampson.

Wrottesley, J. 16th June, 1938.

ROAD TRAFFIC—PEDESTRIAN CROSSING—COLLISION BETWEEN PLAINTIFF AND DEFENDANT'S CAR ON CROSSING—PLAINTIFF'S ACTION RENDERING COLLISION UNAVOIDABLE—LIABILITY.

Action for damages for personal injuries.

While the plaintiff was crossing a public highway at a pedestrian crossing he was knocked down by a motor car which was owned by the defendant and being driven by a third person as her servant or agent. The plaintiff contended that the defendant's servant or agent was guilty of negligence, and that, as the crossing in question was a crossing within the meaning of the Pedestrian Crossing Places (Traffic) Provisional Regulations, 1935, the driver was guilty of a breach of statutory duty in failing to approach the crossing at such a speed as to be able to stop if necessary before reaching it. The defendant denied that she or the driver had been guilty of a breach of statutory duty or of negligence, and pleaded that the plaintiff was guilty of contributory negligence in stepping off into the roadway without regard to the traffic on it, and in thus coming suddenly and immediately in the path of the defendant's car at a time when it was impossible for the driver to avoid colliding with him.

WROTTESLEY, J., said that the plaintiff went to the edge of the pavement and was looking away from the approaching car. He was not presenting to the driver of the car the appearance of a person going to cross the road at all. In fact, he stepped off the pavement in such a way as to meet the defendant's car on its near side. One reading of the decision in *Bailey* v. *Geddes* (1937), 81 SOL. J. 684, and of *Chisholm* v. *London Passenger Transport Board* (1938), 82 SOL. J. 396; 54 T.L.R. 773, which followed it, might, he supposed, lead to the proposition that it was impossible to knock down a person on a pedestrian crossing by means of a motor car without being liable for the result, but he did not think that it had been intended to lay down that proposition in *Bailey* v. *Geddes*, *supra*. He observed that Greer, L.J., had said that the accident there took place when the two men who were crossing were very nearly right across; that one of them was fortunate enough to escape and the other one was just too late, but would have been fully and clearly protected if effect had been given by the driver of the car to the regulations; but it was not, and it was obvious that before he got to the crossing the driver of the approaching car must have had an opportunity of seeing these two men on the crossing and an opportunity, therefore, of strictly adhering to regulations Nos. 3 and 4. He (Wrottesley, J.) thought that Greer, L.J., used that language advisedly, and he doubted very much whether Greer, L.J., or the other lords justices, would have decided that it was impossible for a pedestrian so to step on to a crossing in such a way as, in effect, "to commit suicide." He (Wrottesley, J.) thought that it was possible. In the present case, he did not think that the driver ever had an opportunity of seeing that the plaintiff intended to cross. The plaintiff's demeanour deceived her into thinking that he had no intention of crossing the road at all. When the defendant's car was either just on the crossing or a few feet from it, the plaintiff suddenly stepped into the road. The driver of the car swerved to the right but did not succeed in avoiding him. She was not going at an excessive speed, and was able to pull up with the plaintiff's body lying in the road next to where she was sitting in the car. There must be judgment for the defendant.

COUNSEL: *Eric Sachs*, for the plaintiff; *F. G. Paterson*, for the defendant.

SOLICITORS: *Rider, Heaton, Meredith and Mills*, for *Harold Gee and Williams*, Bristol: *William Hurd and Son.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Perkins *v.* Perkins.

Bucknill, J. 23rd May, 1938.

DIVORCE — MAINTENANCE — MODIFICATION OF ORDER — REMARRIAGE OF WIFE—SAVING OF EXPENSE OF SEPARATE ESTABLISHMENT—AMOUNT REDUCED—SUPREME COURT OF JUDICATURE (CONSOLIDATION) ACT, 1925 (15 and 16 Geo. 5, c. 49), s. 196.

Summons adjourned into court.

This was an appeal from the Registrar dismissing the petition of the husband for reduction of maintenance upon the ground of the improvement in the financial position of the wife by reason of her remarriage.

BUCKNILL, J., in giving judgment, said that on 4th March, 1936, the husband filed his petition for reduction of maintenance. He put forward his claim on the basis that his own financial position was worse, and his wife's financial position was better, than at the date of the order. It was unnecessary to set out the details of the change in the husband's financial position. It was sufficient to say that, on his own evidence, it was clear that his position had not become worse, apart from the fact that he had seen fit to make two voluntary settlements on Rosalind, the child of his first marriage. It was said on his behalf that he was under a moral obligation to effect one of those settlements, but he was also under a moral obligation to make proper provision for the wife, whom

he had greatly wronged by his adultery. He, his lordship, found that the husband's financial position had not become worse since the consent order was made. It was admitted by counsel on behalf of the wife that, having regard to the fact that the original order was made until further order, the court had jurisdiction to review it, although the husband's means had not, in fact, diminished, and the only ground for review was that the wife's fortune had increased. That followed from the decisions in *Bennett* v. *Bennett* [1934] W.N. 26; *Turk* v. *Turk* [1931] P. 116; 75 SOL. J. 394; and *Hall* v. *Hall* [1915] P. 105; 59 SOL. J. 381. The substantial point in the husband's petition was that since the decree absolute the wife had married again, and it was argued on behalf of the husband that her financial position had thereby substantially improved. The problem as to the principle to be adopted by the court when considering the effect of the remarriage of the wife upon orders for maintenance was not free from difficulty. The question as to whether the husband ought to continue to provide maintenance for his wife after she has remarried had been considered in various cases. Bargrave Deane, J., in *Sharpe* (*otherwise Morgan*) v. *Sharpe* [1909] P. 20, when ordering the husband to secure maintenance for the wife at the rate of £100 per annum, said, at p. 23: "Then comes the question, for what length of time should it be payable? In my opinion it should be for the life of the petitioner *dum sola vixerit*, because, if she marries again, there is no reason why the payment of this money should be continued to her. His lordship proceeded to review other authorities, dealing with the factor of remarriage and the propriety of inserting a *dum sola* restriction, including *Hulton* v. *Hulton* [1916] P. 57; *Fisher* v. *Fisher* (1861), 2 Sw. & Tr. 410; *Sidney* v. *Sidney* (1865), 4 Sw. & Tr. 178; (1866), L.R. 1 P. & D. 78; *Lister* v. *Lister* (1889), 15 P.D. 4. In *Wood* v. *Wood* [1891] P. 272, an innocent wife obtained a decree for the dissolution of her marriage on the ground of the adultery and cruelty of her husband. An order for permanent maintenance of £60 per annum was made, and the registrar reported that the order should be made without a *dum sola et casta* clause. On appeal, Sir Francis Jeune, P., expressed the view that the clause ought to be inserted. The wife appealed to the Court of Appeal, and Lindley, L.J., in the course of a written judgment with which Kay, L.J., and Bowen, L.J., concurred, said, at pp. 276, 277: "The least that a man ought to do for the maintenance and support of his wife, when he so disregards his own duties to his wife as to drive her from her home without any fault on her part, and practically force her to obtain a divorce, is to do what he can, consistently with his means, to maintain her in reasonable comfort, having regard to her age, health, and position in society . . . If, as in this case, the husband's means are such that he can only allow his wife a bare subsistence, and she has nothing, it seems to us unjust to her that even this subsistence money should cease merely because she may marry again. The continuance of the allowance may conduce very materially to her marrying, and to her future comfort and happiness. On the other hand, justice to him does not, in our opinion, require the cessation of so small an allowance on her marrying again. Under the circumstances therefore, of this case—viz., the innocence of the wife, the misconduct of the husband, the fact that the wife has no property, and the smallness of the allowance made to her—it appears to us that the clause *dum sola et casta vixerit* should be struck out. Applying the tests laid down by Lindley, L.J., to the facts of the present case, the husband had broken up the marital home by his misconduct, while the wife at the age of thirty-five, after the dissolution of her marriage had no material means of support, apart from such maintenance as her former husband supplied. In those circumstances, it had been considered fair and proper by the husband that he should provide the sum of £500 a year free of tax to the wife, and, in his, his lordship's, view, in the present circumstances, he should continue to make such provision to her, subject to a proper deduction due to the improvement in her financial position by her remarriage. The remarriage of the wife was a factor which must be taken into account when the court considered whether or not the fortune of the wife had increased. From this point of view, the second husband was in the nature of a pecuniary asset to her. What the value of that asset was depended on the circumstances of each case. The present husband of the wife was holding the rank of captain in the Royal Marines, and was aged forty-one. At the present time, he had a government appointment abroad, to be held for two or four years, and the emoluments of his appointment were about £580 per annum, after deduction of tax, and a furnished house, in which the wife was now living with him. He was due to retire in about four years, on a maximum pension of about £400 per annum. The result to the wife of the remarriage was that she was saved the expense of maintaining a separate establishment of her own, and therefore to some extent she saved on rent and food and household expenses. In his, his lordship's, view, the proper order to make was that the figure of £500 per annum free of tax should be reduced to £350 per annum free of tax, until further order, and to that extent the appeal was allowed.

COUNSEL: *Norman Daynes*, K.C., and *Acton Pile*, for the husband; *Noel Middleton*, K.C., and *J. S. Watts*, for the wife.

SOLICITORS: *Evill and Coleman*; *Campbell, Hooper and Todd*.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Swettenham *v.* Swettenham.

Sir Boyd Merriman, P.
24th, 25th and 26th May, 1938.

DIVORCE—INCURABLE UNSOUNDNESS OF MIND—DISTINCTION BETWEEN RECOVERY AND CURE—CERTIFICATION—CONDUCT CONDUCING—DECREE—MATRIMONIAL CAUSES ACT, 1937 (1 Edw. 8 & 1 Geo. 6, c. 57), ss. 2 (*d*), 3.

This was a husband's petition for divorce on the ground of incurable unsoundness of mind. The wife, by her guardian *ad litem*, filed an answer denying that she was incurably of unsound mind. The parties were married in 1878. Thereafter there had been certification and re-certifications of the wife as insane, the longest period during which the wife was at large being nine years, but subsequently to 1927 the wife had been continuously detained.

Sir BOYD MERRIMAN, P., in giving judgment, said that he was concerned to find—and the onus of course was on the petitioner—whether it was true that the respondent was incurably of unsound mind, and had been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition. About the fact of her care and treatment, as defined by the Matrimonial Causes Act, 1937, s. 3, for the prescribed period of five years, there was no controversy or possibility of controversy. That condition was fulfilled. It remained, therefore, to consider whether she was incurably of unsound mind. On the one side, the extreme position had been urged that anything indicating predisposition to insanity was unsound mind. On the other side, he, his lordship, had been adjured to consider whether the unsoundness of mind was such as to warrant the court's breaking up the marriage tie. There was nothing about that in the section. He had to be satisfied that the respondent was incurably of unsound mind. There had also been an argument, developed with great subtlety, on the distinction between "recovery" and "cure." He remained unconvinced that there was anything in that distinction at all—at any rate for the purposes and on the facts of the present case. He had been referred to the Oxford English Dictionary, and it was not necessary to say more than that "to cure" was "to restore to health," and "incurable" was that which "cannot be cured," or is "incapable of being healed by medicine or medical skill." "To recover," on the other hand, was "to

regain health after sickness," and the condition of being "recoverable" was "capable of being restored to a healthy condition." The condition of being "irrecoverable" was that of being incapable of being "restored to health," which, it would be remembered, was the definition, or one of the definitions, of "cure." Finally, "irrecoverable" was defined in terms as being "incapable of being restored to health: incurable: past recovery." There might be a case in which it would be necessary to consider whether there was really any substance in the distinction between the two. The facts of the present case did not require any further research into that particular problem. This lady had, in fact, for the last five years had done for her all that medical and nursing skill and care and attention and treatment could do for her. It was common ground that at her age, and after the protracted illness, any more drastic treatment than that was out of the question, but he was not prepared to draw, for the purposes of the Act, any distinction between the degrees of care and treatment which brought about cure or recovery, as the case might be. Although the present was by no means an aggravated case of unsoundness of mind, or a violent or an extreme case, it was proved on the evidence—and not merely by the fact of certification, which, of course, alone would not be enough—proved beyond any doubt whatever on the medical evidence, that the lady was of unsound mind, and the only question which had caused any doubt in his mind at all was the question whether, having regard to the medical evidence, it could be said to be proved that she was incurably of unsound mind. With regard to that, it was unnecessary to say more than that, on the evidence on either side, he was satisfied that, having regard to the long history of her illness, not forgetting in that connection the two very considerable periods during which she had been restored temporarily, at any rate—to health, but in particular having regard to the length of the last onset, which now extended over eleven years, and above all to her age, there was no prospect of cure. That being so, the petitioner had proved his case. There remained only the faint suggestion, not supported by pleadings or particulars, that there had been something in the nature of conduct conducing. It was clear that, at the time of the wife's pregnancy, which resulted in the birth of a still-born child in 1894, the husband, on his own admission in writing, and developed as it had been by evidence given by him in the witness-box, in effect broke off irrecoverably all conjugal relations with his wife, although he had, of course, maintained her. The marriage in the full sense of the word had ceased to exist from that time, by his decision. For some nine years after that she had been at large, not subject to any certification, but in 1904, as was suggested on the face of the petition for certification, because of excitement due to legal processes, she had been re-certified on 28th October. During that year the husband had taken and filed a petition against his wife and a named co-respondent, charging in circumstantial detail adultery over a prolonged period. That suit had been dismissed at the instance of the co-respondent. It was followed by a suit for restitution by the wife against the husband, in which a decree was pronounced, in fact, only three days before that re-certification. She had been detained for a long time after that. There was a faint suggestion that the husband had never been served with the decree, but it was perfectly plain from an answer he gave that he had been fully aware of it, and had made it plain that he was not intending to obey it, as, in fact, he never did. It would not be possible without much more convincing evidence than that, to find positively that it was the husband's conduct which had conduced to the wife's unsoundness of mind, and he (his lordship) made no such finding. His lordship pronounced a decree *nisi*.

COUNSEL: *A. Melford Stevenson*, for the petitioner; *William Latey*, for the respondent.

SOLICITORS: *Gordon, Dadds & Co.*; *Lowe & Co.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Nawab Mirza Mohammad Kazim Ali Khan and Another *v.* Nawab Mirza Mohammad Sadiq Ali Khan and Others (Oudh Appeal No. 7 of 1934; Nawab Fakhre Jahan Begam and Others *v.* Nawab Mirza Mohammad Sadiq Ali Khan (Oudh Appeal No. 8 of 1934) (Consolidated).

In the report of the above case, at p. 491 of last week's issue, we regret that it was wrongly stated that Mr. W. Wallach appeared as Counsel, and Messrs. Hy. S. L. Polak & Co. as Solicitors for all the Appellants. Dr. H. R. Majid appeared as Counsel and Messrs. Francis & Harker were Solicitors for the first-named Appellant, Nawab Mirza Mohammad Kazim Ali Khan, and Mr. W. Wallach as Counsel and Messrs. Hy. S. L. Polak & Co., as Solicitors, represented only the Appellants Nawab Jahan Begam and Others in Oudh Appeal No. 8 of 1934 and the Respondents Nos. 3 and 6 in Oudh Appeal No. 7 of 1934.

Parliamentary News.

Progress of Bills.

House of Lords.

Air Navigation (Financial Provisions) Bill.
Read Third Time. [21st June.

Baking Industry (Hours of Work) Bill.
In Committee. [20th June.

Brighton Corporation (Transport) Bill.
Read Second Time. [20th June.

British Nationality and Status of Aliens Bill.
Read First Time. [20th June.

Children and Young Persons Bill.
Reported, without Amendment. [20th June.

Coal Bill.
Amendments Reported. [22nd June.

Cowes Urban District Council Bill.
Read First Time. [20th June.

Criminal Procedure (Scotland) Bill.
Read First Time. [20th June.

Dumbarton Burgh (Water) Provisional Order Bill.
Read Second Time. [20th June.

Food and Drugs Bill.
Amendments Reported. [20th June.

Gateshead Corporation Bill.
Commons Amendments agreed to. [21st June.

Herring Industry Bill.
Read First Time. [20th June.

Housing (Rural Workers) Amendment Bill.
Read Third Time. [20th June.

Irwell Valley Water Board Bill.
Read Third Time. [20th June.

Leasehold Property (Repairs) Bill.
Reported, without Amendment. [20th June.

London and North Eastern Railway Bill.
Reported, with Amendments. [20th June.

London County Council (General Powers) Bill.
Commons Amendments agreed to. [21st June.

London County Council (Money) Bill.
Read Third Time. [22nd June.

London County Council (Tunnel and Improvements) Bill.
Read Second Time. [20th June.

Marriages Provisional Order Bill.
Read Second Time. [21st June.

Mental Deficiency Bill.
Read First Time. [20th June.

Middlesex County Council (Sewerage) Bill.
Read First Time. [20th June.

Ministry of Health Provisional Order (Calne Water) Bill.
Read First Time. [21st June.

Ministry of Health Provisional Order (Cholderton and District Water) Bill.
Read First Time. [20th June.

Ministry of Health Provisional Order (Keighley) Bill.
Read Second Time. [21st June.

Ministry of Health Provisional Order (Torquay) Bill.
Read First Time. [20th June.

Nursing Homes Registration (Scotland) Bill.
Read First Time. [21st June.

Ossett Corporation Bill.
Read Third Time. [22nd June.

Pier and Harbour Provisional Order (Clacton-on-Sea) Bill.
Read First Time. [20th June.

Prevention and Treatment of Blindness (Scotland) Bill.
Read Third Time. [20th June.

Redcar Corporation Bill.
Reported, with Amendments. [20th June.
Rickmansworth and Uxbridge Valley Water Bill.
Commons Amendments agreed to. [20th June.
Southern Railway Bill.
Reported, with Amendments. [20th June.
Stanmore Unused Burial Ground Bill.
Read Third Time. [21st June.
Swinton and Pendlebury Corporation Bill.
Reported, with Amendments. [20th June.
West Yorkshire Gas Distribution Bill.
Read Third Time. [20th June.
Workington Corporation Bill.
Read First Time. [20th June.

House of Commons.

Anglo-Turkish (Armaments Credit) Agreement Bill.
Read First Time. [21st June.
Blackburn Corporation Bill.
Reported, with Amendments. [16th June.
Bristol Corporation Bill.
Read Second Time. [20th June.
Chimney Sweepers Acts (Repeal) Bill.
Read Third Time. [22nd June.
Cowes Urban District Council Bill.
Read Third Time. [16th June.
Criminal Procedure (Scotland) Bill.
Read Third Time. [16th June.
Dumbarton Burgh (Water) Provisional Order Bill.
Read Third Time. [17th June.
Essential Commodities Reserves Bill.
Reported, without Amendment. [16th June.
Finance Bill.
In Committee. [22nd June.
Fire Brigades Bill.
Reported, with Amendments. [16th June.
Gateshead Corporation Bill.
Read Third Time. [20th June.
Green Belt (London and Home Counties) Bill.
Reported, with Amendments. [21st June.
Haile Selassie, Emperor of Ethiopia (Property) Bill.
Read First Time. [22nd June.
Herring Industry Bill.
Read Third Time. [16th June.
Housing (Rural Workers) Amendment Bill.
Lords Amendment amended and agreed to. [22nd June.
Imperial Telegraphs Bill.
Reported without Amendment. [16th June.
Infanticide Bill.
Read Third Time. [20th June.
Land Drainage Provisional Order (Louth Drainage District) Bill.
Read Second Time. [22nd June.
London County Council (General Powers) Bill.
Read Third Time. [20th June.
Manchester Corporation Bill.
Amendments considered. [20th June.
Mental Deficiency Bill.
Read Third Time. [16th June.
Middlesex County Council (Sewerage) Bill.
Read Third Time. [20th June.
Ministry of Health Provisional Order (Bucks Water Board) Bill.
Read Second Time. [22nd June.
Ministry of Health Provisional Order (Calne Water) Bill.
Read Third Time. [20th June.
Ministry of Health Provisional Order (Cholderton and District Water) Bill.
Read Third Time. [17th June.
Ministry of Health Provisional Order (Church Stretton) Bill.
Read Second Time. [22nd June.
Ministry of Health Provisional Order (Cirencester) Bill.
Read Second Time. [22nd June.
Ministry of Health Provisional Order (Horsforth) Bill.
Read Second Time. [22nd June.
Ministry of Health Provisional Order (Llandrindod Wells) Bill.
Read Second Time. [22nd June.
Ministry of Health Provisional Order (Mid-Staffordshire Joint Hospital District) Bill.
Read Second Time. [22nd June.
Ministry of Health Provisional Order (Rawmarsh) Bill.
Read Second Time. [22nd June.
Ministry of Health Provisional Order (Torquay) Bill.
Read Third Time. [17th June.
Ministry of Health Provisional Order (Wath-upon-Dearne) Bill.
Read Second Time. [22nd June.
Naval Discipline (Amendment) Bill.
Read Second Time. [16th June.
Nursing Homes Registration (Scotland) Bill.
Read Third Time. [20th June.
Pier and Harbour Provisional Order (Clacton-on-Sea) Bill.
Read Third Time. [17th June.
Plymouth Extension Bill.
Amendments made. [20th June.
Protection of Animals (No. 2) Bill.
Read First Time. [20th June.
Rickmansworth and Uxbridge Valley Water Bill.
Read Third Time. [17th June.
Salmon Fisheries (Scotland) Bill.
Read First Time. [22nd June.
Sheffield Gas Bill.
Amendments considered. [22nd June.
Shropshire Worcestershire and Staffordshire Electric Power (Consolidation) Bill.
Read Second Time. [20th June.
Stanmore Unused Burial Ground Bill.
Read First Time. [21st June.
Supreme Court of Judicature (Amendment) (No. 2) Bill.
Read First Time. [20th June.
Surrey County Council Bill.
Read Second Time. [20th June.
Wakefield Corporation Bill.
Amendments made. [20th June
West Hartlepool Corporation (Trolley Vehicles) Provisional Order Bill.
Read Second Time. [22nd June.
West Thurrock Estate Bill.
Reported, with Amendments. [16th June.
West Yorkshire Gas Distribution Bill.
Read First Time. [20th June.
Workington Corporation Bill.
Read Third Time. [17th June.
Workmen's Compensation (No. 2) Bill.
Read First Time. [21st June.

The Law Society.

NOTICE OF ANNUAL GENERAL MEETING.

The Annual General Meeting of the members of The Law Society will be held at the Society's Hall (Chancery Lane entrance), on Friday, the 8th July, at 2 p.m.

The following are the provisions of bye-law 15 as to the business to be transacted at an Annual General Meeting, namely:—

"The business of an Annual General Meeting shall be the election of President, Vice-President, and Members of Council, as directed by the Charter, and also the election of Auditors; the reception of the Accounts submitted by the Auditors for approval, the reception of the Annual Report of the Council, and the disposal of business introduced by the Council, and of any other matter which may consistently with the Charter and Bye-laws be introduced at such meeting."

The following are the names of the Candidates nominated to fill the twelve vacancies in the Council, and in the offices of President, Vice-President, and Auditors:—

Percy Dumville Botterell, C.B.E.; William Charles Crocker, M.C.; Francis John Fallowfield Curtis; William Davies; Arthur Frederic Brownlow Fforde; Hugh Matheson Foster, B.A.; Douglas Thornbury Garrett, B.A.; William Edward Mackenzie Mainprice; Charles Gibbons May; Walter Charles Norton, M.C.; Harvey Forshaw Plant, M.C.; Sir Reginald Ward Edward Lane Poole, K.C.V.O.; George Stanley Pott, B.A.

As President, William Waymouth Gibson, B.A., LL.M.; as Vice-President, Randle Fynes Wilson Holme, B.A.

As Auditors of the Society, John Stephens Chappelow, F.C.A., James Curzon Mander, and Percy Wellington Taylor.

ANNUAL REPORT.

The Annual Report of the Council, to be presented to the General Meeting of the Members on 8th July, states that there are twelve vacancies on the Council, ten of which are caused by retirement in rotation, one by the death of Sir Roger Gregory, and one by the resignation of Mr. Arthur Murray Ingledew. A list of those nominated appears above in the notice of the Annual General Meeting.

MEMBERSHIP OF THE SOCIETY.

The Society has now 11,124 members, of whom 4,449 practise in town and 6,675 in the country. The number

of members who joined the Society during the past year is 578 as compared with 474 in the previous year. After allowing for deaths, resignations and exclusions, the number of members shows an increase for the year of 216. The present membership is once again the highest in the Society's history, being approximately two-thirds of the total number of practising solicitors. The Council urge all members to do what they can towards persuading non-members to join the Society. By this means they will be assisting in its work of protecting and advancing the interests of the Profession.

The Law Society's Digest, 1937.

The Law Society's Digest, 1937, was issued to members in March 1938.

The book combines in one volume, with a general index, a new edition of the two books, known as the "Solicitors' Remuneration Digest" and "Law, Practice and Usage in the Solicitors' Profession," the last editions of which (issued in the year 1923) contained decisions and Opinions down to the end of the Michaelmas Sittings, 1922.

Additional copies of the Digest are available for members at the price of ten shillings per copy.

Record and Statistical Department.

This department, instituted in 1908, has during the past year continued its work of collecting and filing information as to the successors of retired or deceased solicitors, and as to the birth, parentage, appointments, etc., of past and present solicitors.

During the year ending 15th November, 1937, 5,630 London and 10,848 country practising certificates were issued, compared with 5,488 and 10,811 respectively in the previous year.

Certificates of death of 364 solicitors have been received from Registrars of Death during the year, compared with 399 during the previous year. The total number of deaths recorded during the year 1937 was 456, a decrease of eighty on the number recorded in 1936.

Provincial Meeting, 1937.

The Fifty-third Provincial Meeting of the members of The Law Society was held at Exeter on the 28th and 29th September, 1937, on the invitation of the Devon and Exeter Incorporated Law Society under the presidency of Mr. H. W. Michelmore, of Exeter.

The meeting throughout was favoured with fine weather, and was very greatly enjoyed by all those who participated in it.

Future Provincial Meetings.

The Manchester Law Society will hold their Centenary in 1938, and, in view of it have invited the Society to hold their Provincial Meeting at Manchester in that year. It will take place from Monday, the 26th September, to Thursday, the 29th September.

The Worthing Law Society have invited the Society to hold their Provincial Meeting at Worthing in the year 1939.

The Blackpool and Fylde District Law Society have invited the Society to hold their Provincial Meeting at Blackpool in the year 1941. The Preston Law Society will act jointly as hosts on the occasion.

The Hampshire Law Society will hold their Jubilee in 1942, and have invited the Society to hold their Provincial Meeting at Southampton in that year.

All the foregoing invitations have been accepted, and the Council have expressed to the inviting Societies their thanks on behalf of members generally.

Administration of Justice (Miscellaneous Provisions) Bill.

This Bill, as introduced in the House of Lords, was considered by the Council and referred to the Parliamentary Committee for consideration and report. The Bill contained a provision for the appointment of legally qualified persons as Chairman or Deputy Chairman of Quarter Sessions, but the expression "legally qualified person" did not include a solicitor. The Council made representations to the Lord Chancellor's Department that solicitors should also be eligible for appointment as Chairmen or Deputy Chairmen of Courts of Quarter Sessions and the Bill was amended in Committee of the House of Lords so as to render eligible for such appointments solicitors of not less than ten years standing.

Banks Completing Purchases.

Reference was made in the last Annual Report to the suggestion that had been made that it was becoming a common practice for solicitors to complete purchases through bankers and that if there were any justification for this suggestion the Council should notify the profession of the undesirability of employing bankers instead of employing solicitor agents in the ordinary way.

The Council referred the matter to a special committee whose report was adopted. The special committee deprecated the practice as tending to encourage bankers and other non-professional agents to transact solicitors' work, and they pointed out that if a solicitor is not employed the purchaser's solicitor incurs the risk of losing the protection afforded by s. 69 of the Law of Property Act, 1925. The committee added that although in small cases it is generally possible and is largely customary to complete purchases by post, any risk involved by completion elsewhere than at the vendor's solicitors' office or at the office of the mortgagee's solicitors must be that of the purchaser and not of the vendor. Finally, the committee expressed the view that the employment of professional agents would be encouraged if in small purchases professional agents were careful to charge a reasonable fee, having regard to the amount of the purchase money.

Subpœnas.

Conduct Money.

The Council received a complaint from members that they had served a Subpœna *duces tecum* upon a representative of a Government Department and paid him a guinea conduct money, but that he had refused to refund the conduct money, although the case had been settled out of court before he had been required to attend on the subpœna. The Council communicated upon the matter with the Government Department concerned and expressed the view that the conduct money ought to be repaid. This view, however, was not accepted and the Council then addressed a communication to the Lord Chancellor's Department, from whom a reply was received expressing the opinion that, whatever the position might be as a matter of law, conduct money paid to a Government Department, when the case is settled before it gets into court, ought to be refunded and, accordingly, a cheque had been forwarded to the members concerned.

The Council expressed their thanks to the Lord Chancellor's Department for the action they had taken.

Defalcations by Solicitors.

In November last, the Council considered certain recent cases of defalcations by solicitors. They regarded the matter as one of very great importance to the Profession and appointed a special committee to report upon the possible courses which it was open to the Council to pursue.

A considerable number of suggestions for preventind defalcations was received from members of the Society ang all of these were referred for consideration to the special committee, who reported to the Council on the 8th April, 1938. The report of the special committee made a number of recommendations. It further proposed that those which did not require legislation should be put into operation at once, and that other proposals, which involved the introduction of legislation, or the making of rules under the Solicitors Act, 1933, should be submitted to the Provincial Law Societies in the first instance for their comments. The report was adopted by the Council and sent to all the Provincial Law Societies accordingly.

Finance Bill, 1938.

The Council considered this Bill, more particularly in connection with its retrospective provisions. They addressed a communication to the Chancellor of the Exchequer, pointing out that they did not desire to make any comments on the general principles involved, but having regard to certain aspects of the Bill which appeared to go to the root of the principles of financial legislation, and which affected gravely the relationship between solicitors and clients whom they might be called upon to advise, they wished to refer to the retrospective effect of Clauses 18, 19 and 20 of the Bill as read a second time, which clauses dealt with the taxation of proceeds of sale of coupons and funding bonds.

The Council considered it unnecessary to do more than refer to the objection to re-opening closed transactions, but urged that retrospective legislation on financial topics would create a dangerous precedent and cause more evil than it could cure. They pointed out that the fact that recipients of proceeds of sale of coupons and funding bonds are not liable to tax can in no sense be said to be tax evasion, and the question only arises when there has been default in payment of interest and that no man would deliberately attempt to arrange for default on the interest to which he is entitled in order to avoid tax on the proceeds, which would generally be less than the full interest.

The Council ventured to urge that if these clauses of the Bill could be altered so as to avoid the retrospective effect,

no difficulty would fall upon the Revenue in respect of payments already made, having regard to the provisions of s. 24 of the Finance Act, 1923.

Hire Purchase Bill.

This Bill was considered by the Parliamentary Committee, who regarded as undesirable the following words which appeared in the Schedule to the Bill :—

"In case you are in doubt as to your position you should apply to your local County Court."

They communicated with Major Milner, M.P., who was one of the supporters of the Bill, and the words to which objection was taken were omitted from the Bill when it emerged from the Committee stage.

The Council expressed their thanks to Major Milner and resolved that no further action was necessary with regard to the Bill.

Conditions of Sale offering Free Conveyances.

On the 9th July, 1937, the Associated Provincial Law Societies passed a resolution advocating a revision in certain respects of the Scale Committee's Report on Conditions of Sale offering Free Conveyances, which was adopted by the Council on the 22nd May, 1936.

This resolution was referred by the Council to the Scale Committee for consideration and report.

Registration of Title.

In May of this year notices appeared in the *London Gazette* that the Privy Council are proposing to make an Order that on and after the 1st January, 1939, registration of title to land is to be compulsory on sale in the County Borough of Croydon and on and after the 1st January, 1940, registration of title to land is to be compulsory on sale in the County of Surrey.

Shortly before these notices appeared, the Council received a communication from the Lord Chancellor with regard to them inquiring whether The Law Society proposed to ask for a public inquiry under s. 122 (3) of the Land Registration Act, 1925. The Council replied that their policy was not to obstruct the extension of land registration in areas where it is proved to be desired, but rather to do all they could to assist in making the working of such extension harmonious and efficient. They felt it would not be right for them to forestall the views or actions of any local Law Society involved, more especially because they are assured by their provincial representatives that many areas in the country are not ready for the extension of registration. The Council are in communication with the local Law Societies, interested, viz.: with regard to the County Borough of Croydon, the Croydon and District Law Society, and with regard to the County of Surrey, the South-East Surrey Law Society.

Enforcement of Mortgages.

Mortgagees' Costs.

A complaint was received by the Council relating to the method of awarding costs to a mortgagee's solicitor under the practice directions issued on the 22nd April, 1937, which provide that, when an order is made for the recovery of a sum of money, whether alone or coupled with an order for possession, the costs awarded will normally be in accordance with the table of fixed costs in respect of money claims in force in the High Court.

The facts were that solicitors issued a writ in the Chancery Division, claiming the balance of money due under a mortgage after the property had been sold by their client, the mortgagee. The defendant did not enter an appearance, but, in order to comply with the practice directions, the plaintiff's solicitors, instead of signing judgment in default of appearance, had to take out a summons for leave to sign judgment in the same way as would have been done in proceedings under Ord. XIV in the King's Bench Division if the defendant had appeared.

On the hearing of the summons, the Master made the order asked, but proposed to award the plaintiff's costs upon the scale fixed for judgment in default of appearance. The plaintiff's solicitors objected to this proposal and pointed out that, whereas in the King's Bench Division the scale for judgment in default of appearance applied only to cases where judgment could be signed without the necessity for an order, in the present case exactly the same work had been necessary to obtain judgment as under Ord. XIV, and submitted that the higher scale fixed for judgment under Ord. XIV applied to the case. The solicitors pointed out that the judgment was obtained pursuant to an order, although in fact there was no appearance.

A letter was accordingly written to Mr. (now Lord) Justice Clauson enclosing a copy of the complaint, and stating that, while there was no doubt some definite reason for the allowance of the smaller sum of costs, the solicitors' claim for the higher fee did not seem unreasonable, they having done very much what they would have had to do under Ord. XIV.

A letter was received in reply pointing out that the effect of adopting the King's Bench fixed scales of costs is that the defendant is burdened as a matter of personal liability with no heavier costs by reason of the new procedure than he was burdened with before. It is true that the plaintiff's solicitor incurs somewhat heavier expense in obtaining the order in default of appearance than he was put to under the old procedure. The plaintiff's solicitor, however, is free to charge against his client, subject in due course to taxation or moderation, the proper remuneration (as between solicitor and client) for his work, and the client, as mortgagee, would be entitled, as part of his mortgagee's costs, charges and expenses, to credit for that sum as against proceeds of sale or on taking the mortgage account.

It appears that the point was raised several times when the existing practice was first put into force, and it has been recognised that the matter, as explained above, works out with ultimate fairness to all parties.

Parliament Elections.

Fees to Presiding Officers.

Reference was made in the last Annual Report to the fact that the Council had addressed a letter to the Treasury requesting them to restore the scale of fees payable to presiding officers and poll clerks at Parliamentary elections which was current in 1924.

In July, 1937, Mr. Longmore, a Member of the Council, attended at the Home Office and made representations on behalf of the registration officers. The Council understand that, following upon their letter to the Treasury and the representations made to the Home Office, the Treasury are proposing to restore the 1924 scale in full as regards poll clerks, and that as regards presiding officers they propose a restoration of approximately two-thirds of the reduction made in 1931 as fairly meeting the case. This means that in Parliamentary counties the fee in respect of a twelve hour poll will be £3 instead of £2 15s. under the present scale, and in Parliamentary boroughs £2 17s. 6d. instead of £2 12s. 6d. under the present scale. It is also proposed to return to the 1924 scale as regards the allowance for counting votes, and as regards the allowance for the remuneration of persons employed in despatching and receiving ballot papers of absent voters.

Chancery Masters—Taxing Masters—Chancery Registrars—Bankruptcy Registrars: Remuneration.

The attention of the Council was directed in November, 1937, to the fact that the salaries of the King's Bench Masters had been raised recently and that no similar increase had been made in the salaries of the Chancery Masters and Taxing Masters.

The Council ascertained that applications for increased remuneration had been made by the Chancery Masters, the Taxing Masters, the Chancery Registrars and the Bankruptcy Registrars, respectively, to the Lord Chancellor and they were informed that these applications had been discussed at some length by the Lord Chancellor and the Treasury.

The Council ventured to urge that there were justifiable grounds for conceding the increase of salary for which the Chancery Masters had applied and they felt, having regard to the articles which had appeared in the issue of *The Solicitors' Journal* of the 19th February, and in the *Law Journal* of the 26th February, 1938, that they were giving expression to views which were widely held.

Finally, the Council inquired whether the Lord Chancellor would be good enough to receive a deputation on the subject. No deputation has yet been received, but the Council intend to pursue the matter whenever there is an opportunity of doing so.

Police Reports in Accident Cases.

Reference was made in the Annual Report for 1936 to interviews which the Council had had with Home Office officials on the subject of the supply of copies of statements of witnesses made to the police or available in the hands of the police regarding traffic accidents. The Home Office stated that the reasons for the then recent change in the practice under which copies of such statements had been supplied were that the police were being diverted from their proper functions of keeping the peace and keeping the roads clear, and that if the availability of statements made by witnesses on the occasion of accidents was increased there would be a decrease in the willingness of witnesses to make such statements.

It had been proposed as a possible concession that if any particular witness were personally to authorise the solicitor

to see any statement he or she might have made, the Home Office would consider the possibility of producing that statement and giving copies of it.

The Council were informed in June last that upon application being made to a chief constable for copies of statements of the witnesses of a certain accident he had replied that such statements could only be supplied to the persons who had made them, or to their accredited legal representatives. Subsequently, in consequence of representations made by the Associated Provincial Law Societies, a letter was received from the Home Office indicating that if The Law Society desired to reopen the matter they were prepared to arrange for a further conference. This offer was accepted and the Council attended by deputation and urged their views that all statements made to the police in connection with accidents should be supplied on request to all parties interested in such accidents. The Council agreed that if this concession were made a proper fee should be charged to cover the clerical work involved, and that where police proceedings were contemplated the statement should be withheld until such proceedings had been concluded.

The matter was left upon the understanding that it would be put on the agenda for discussion at the next Central Conference of Chief Police officers with the object of reviewing the procedure in the light of experience, and bearing in mind the representations which the Council had made.

Retainer Rules.

The Council have for some time past been in correspondence with the General Council of the Bar with a view to the Retainer Rules being redrawn so as to clarify certain points and to provide for certain circumstances which are not dealt with satisfactorily in the Retainer Rules which were agreed between the Council of The Law Society and the General Council of the Bar, and approved by the Attorney-General in 1892.

The new Retainer Rules were published *in extenso* in the issue of *The Law Society's Gazette* for May 1938. The new Rules now embody the ruling that, subject to two exceptions, none but a solicitor may deliver a retainer. The main alterations in the Rules are (1) the provision in r. 5 that a general retainer must specify the courts, tribunals or matters to which it applies, and (2) the provision in r. 8 that a general retainer may by its terms be limited in duration (which was not possible under the corresponding rule in the Retainer Rules of 1892). Rule 12 introduces a more precise definition of the circumstances in which a general retainer may be treated by counsel as determined. It provides that if after the commencement of any proceedings to which a general retainer applies no brief or special retainer is delivered to counsel within a reasonable time, or if counsel has inquired of the solicitor whether he is to receive a brief or special retainer and has not received such brief or special retainer within three days, where the lay client is in England, or within seven days in any other cases, or receives an answer in the negative, the counsel may treat the general retainer as determined and accept a brief or retainer from another party subject to the provisos set out in the Rules.

The Rules are also followed by a note which is intended to clarify the position under the Rules as regards Parliamentary business.

Official Shorthand Writers in the Supreme Court.

Mention was made in the last Annual Report of the report of the committee set up by the Lord Chancellor to consider the technical and administrative problems involved in the establishment of a system for taking an official shorthand note in the Supreme Court, and to report in what manner they could best be solved. The Council received a communication from the City of London Solicitors' Company referring to the notice issued from the Lord Chancellor's Department regarding the new regulations as to the supply of transcripts of shorthand notes for use in the Court of Appeal. Attention was directed in particular to the hardship which would be caused to solicitors by reason of the possibility that under the new regulations they would be deprived of their charges for copying work. The Council communicated with the Lord Chancellor's Department with a view to ascertaining the precise meaning of the notice which had been issued, and they received a reply stating that arrangements had been made with the Shorthand Writers' Association that all three copies of the transcript for the Court of Appeal should go straight from the office of the Association to the Lords Justices' clerks, and that it was correct that solicitors would presumably need one additional copy to be supplied by the Shorthand Writers' Association, and that this would presumably be charged for at the rate of twopence a folio. The Council thereupon communicated with the Lord Chancellor's Departmen pointing out the hardship which the arrangement would cause to solicitors, in view of the fact that the supply of copies of documents for the use of the Court of Appeal is almost the only source of profit to solicitors upon appeals. A reply was received from the Lord Chancellor's Department stating that the Lord Chancellor considered that the method of remuneration of solicitors in the Court of Appeal appeared to be inappropriate and that if the solicitor for the appellant or respondent is not properly remunerated under the Orders as they stand at present, the proper course to take was to amend the Orders.

The Council were invited to submit for the consideration of the Lord Chancellor a reasoned case for so doing. The matter was accordingly referred to the Legal Procedure Committee, and a memorandum was prepared and forwarded to the Lord Chancellor.

Poor Persons Procedure.

The annual report of the work done by The Law Society and the Provincial Law Societies during the period from 1st January, 1937, to 31st December, 1937, was issued in January last, and is reprinted in the Appendix to the report.

The report sets out the additional grounds on which divorce may be granted and directs particular attention to the increase in the number of applications which that addition must involve. Special reference is made to the necessity for holding a series of emergency committee meetings in order to deal with the London applications, and the hope is expressed that the London Committee may be in a position to give additional advice to provincial committees on matters which may arise in connection with the new Act. The report states also that the opinion of counsel had been obtained on doubtful points of law and practice arising under the new Act and that a copy of that opinion had been circulated amongst the provincial committees, which it was believed would to a material extent relieve the burden thrown upon the committees in deciding whether in any particular case an application should or should not be granted.

An important point in the report is the expression of opinion that it is urgently necessary to extend to the fullest extent possible jurisdiction in divorce to the district registries and assize towns. The Council expressed the wish that this extension should be made without delay. They communicated their views to the Lord Chancellor before the new Act came into force, and have done so again since Lord Maugham's appointment.

The large additional amount of work which must result from the passing of the Matrimonial Causes Act will involve an increase in the administration expenses. The Treasury have recognised this fact and have agreed to a grant of £10,000 for the year 1939, as against £7,000 for the year 1938. They have stated also that should this sum prove inadequate the deficit can be made up in the future.

Proceedings under the Solicitors Acts, 1932 to 1936.

An extract from the forty-ninth annual report of the Disciplinary Committee constituted under the Solicitors Act shows that, on the application of the Society, the names of five solicitors, who had previously been convicted on indictment and sentenced to terms of imprisonment, were struck off the Roll by order of the committee; that on the application of private individuals and of the Society the names of four solicitors were struck off the Roll and three other solicitors were suspended from practising and ordered to pay costs; that in two cases the committee found the solicitors guilty of professional misconduct, and imposed fines of £100 and £50 respectively, and in each case the solicitor was ordered to pay the costs.

Business of the Professional Purposes Committee. *Solicitors' Accounts Rules*, 1935.

Since the Rules came into force the Council have inspected the accounts of solicitors under the procedure provided by r. 6 in sixty-three cases. In eighteen cases disciplinary proceedings have already been heard and in each of such eighteen cases the Disciplinary Committee have found the solicitor concerned guilty of professional misconduct and in six cases the name of the solicitor has been struck off the Roll, in eight cases the solicitor has been suspended from practice, in three cases the solicitor has been fined, and in one case the solicitor has been ordered to pay the costs only. In one case the solicitor who failed to keep the appointments and produce his books for inspection was suspended from practising for a period of one year and ordered to pay the costs.

Proceedings against Uncertificated Solicitors and Unqualified Persons.

During the year under review proceedings under s. 46 of the Solicitors Act, 1932, for wilfully pretending to be qualified

to act as a solicitor, have been taken against two uncertificated solicitors. One of these was convicted and fined. With regard to the other, the magistrate held that there was no case to answer, but on an appeal to the Divisional Court by way of case stated the appeal was allowed with costs, and the case was remitted to the magistrate with the direction that his decision was wrong and that he should hear and determine the case in full.

Proceedings were also taken against four unqualified persons, three of whom were convicted and in the other case the summons was dismissed. In one other case the summons was withdrawn upon an undertaking by the defendant not to repeat the offence and on payment of costs. Four unqualified persons were fined and ordered to pay costs in respect of the preparation of legal instruments contrary to the provisions of s. 47, and in one other case the summons was withdrawn on an undertaking not to repeat the offence and on payment of costs. Proceedings were also taken against one unqualified person for an offence under s. 48, i.e., undertaking Land Registry business, and he was convicted and fined.

Miscellaneous.

Nine applications under s. 52 of the Solicitors Act, 1932 (for leave to employ solicitors struck off the Roll or suspended from practice), were considered by the Council, and granted for a period of twelve months.

The committee considered forty-seven applications by articled clerks under s. 21 of the Solicitors Act, 1932, for permission to hold office during articles. In two cases the Council did not approve the applications, and the Master of the Rolls refused to make the order.

The committee considered 167 applications for the issue of a practising certificate under s. 38 of the Solicitors Act, 1932, and refused one.

One application was made during the period under review for restoration to the Roll, and the Master of the Rolls made an order in the applicant's favour.

The committee referred to the Lord Chancellor's Department for suitable action two cases which they regarded as infringements of s. 176 of the County Courts Act, 1934 (debt collecting forms which had the appearance of having been issued by the county court).

As indicating the magnitude of the work undertaken by the Professional Purposes Committee it is convenient to mention here that that committee dealt during the period under review with, approximately, 1,700 applications affecting the practice and etiquette of the Profession.

Societies.

The West Wales Law Society.

The annual meeting of the West Wales Law Society was held at the Queen's Hotel, Aberystwyth, on Wednesday, 8th June. After the annual meeting a luncheon was held at the Queen's Hotel, where there was a representative gathering. The Honourable Mr. Justice Hilbery was the chief guest. The following guests were also present: Mr. A. T. James, K.C., Mr. Joshua Davies, Barrister-at-Law, Mr. George Phillips, High Sheriff of Carmarthenshire, Mr. F. L. Steward, Chairman of the Solicitors' Benevolent Association, Mr. Ian D. Yeaman, a member of the Council of the Law Society, Mr. J. R. Morgan (President) and Mr. W. Eustace Bevan (Secretary), Bridgend District Law Society, and Mr. A. C. R. David, Secretary Mid-Wales Law Society. After the Loyal toast, the toast "The Bench and Bar" was proposed by the President, Mr. J. A. Bancroft, and The Honourable Mr. Justice Hilbery responded on behalf of the Bench, and Mr. Joshua Davies responded on behalf of the Bar. "The West Wales Law Society" was proposed by Mr. A. T. James, K.C., and responded to by Mr. F. H. Jessop, one of the Vice-Presidents. "The Solicitors' Benevolent Association" was proposed by Mr. H. Llwyd H. Williams, and responded to by Mr. F. L. Steward, the Chairman of the Association. "The Visitors" was proposed by Mr. T. Eyton Morgan, and responded to by Mr. Ian D. Yeaman, a member of the Council of The Law Society. The function was a great success and all the guests and members of the Society appeared to enjoy themselves.

Society of City and Borough Clerks of the Peace.

The annual meeting of the above Society was held at the Town Hall, Ludlow, on Wednesday, 15th June, Mr. W. Charles Tyrrell, the President, being in the chair. Points of interest to clerks of the peace were discussed and the following officers were appointed for the ensuing year: President, G. S. Godfree, Brighton; Vice-President, G. H. Boyce Peters, Chichester; Treasurer, G. Copson Peake, Leeds; Hon. Secretary, E. M. Redhead, Manchester; Committee, S. Burrows, Cambridge, H. B. Chapman, Burton-on-Trent, W. H. Day, Maidstone, A. A. G. Jones, Gloucester, W. Charles Tyrrell, Ludlow, G. E. Smith, Sheffield, T. E. Toller, Leicester, Dr. E. I. Watson, Norwich, and Dr. H. Woodhouse, Hull. After the meeting the members were entertained to tea by Mr. J. L. Greenway, at the Castle House, and the annual dinner was held in the evening at the Bull Hotel, Ludlow.

Rules and Orders.

THE LOCAL LAND CHARGES (AMENDMENT NO. 2) RULES, 1938. DATED JUNE 2, 1938.

I, Frederic Herbert Lord Maugham, Lord High Chancellor of Great Britain, by virtue and in pursuance of the Land Charges Act, 1925,* and all other powers enabling me in this behalf, do hereby make the following Rules:—

1. Paragraph (iii) of the proviso to paragraph (1) of Rule 4 of the Local Land Charges Rules, 1934,† as amended by the Local Land Charges (Amendment) Rules, 1938,‡ shall be omitted and the following paragraph shall be substituted therefor:—

"(iii) in the case of planning charges arising or created within the City of London, the proper officer shall be the town clerk, or the person for the time being authorised to act as town clerk, of the City of London."

2. These Rules may be cited as the Local Land Charges (Amendment No. 2) Rules, 1938, and shall be deemed to have had effect from the commencement of the Local Land Charges (Amendment) Rules, 1938, and the Local Land Charges Rules, 1934, as amended, shall have effect as further amended by these Rules.

Dated the 2nd day of June, 1938.

Maugham, C.

* 15 & 16 Geo. 5, c. 22. † S.R. & O. 1934 (No. 285) I, p. 924.
‡ S.R. & O. 1938 No. 499.

Legal Notes and News.

Honours and Appointments.

The King has approved the appointment of Mr. HUGH IMBERT PERIAM HALLETT, K.C., to be a Commissioner of Assize to go the Midland Circuit (Nottingham). Mr. Hallett will sit to assist Mr. Justice Asquith.

Judge Sir THOMAS ARTEMUS JONES has been elected chairman of Caernarvonshire Quarter Sessions in succession to Mr. Lloyd George.

Mr. RICHARD CLEGG, Town Clerk of Macclesfield, has been appointed Town Clerk of Chesterfield as from 12th September next. Mr. Clegg was admitted a solicitor in 1927.

At a meeting of the Council of the University of Liverpool, held on Tuesday, 14th June, Mr. J. Turner was appointed Lecturer and Tutor in Law from 1st October, 1938. Mr. Turner, who is a graduate of the University, has held appointments in the Metropolitan College of Law, the London School of Economics, and the University of Manchester.

Notes.

The retirement is announced of Mr. Donald Mackay, one of the members of the Scottish Land Court. He was appointed in 1922.

The next Quarter Sessions of the Peace for the Borough of Wolverhampton will be held at the Sessions Court, Town Hall, North Street, Wolverhampton, on Friday, the 8th July, at 10 o'clock in the forenoon.

The search rooms of the Public Record Office will be closed for cleaning from 19th September to 24th September. Special arrangements will be made for the transaction of urgent legal business. In addition the literary search room will be closed for cleaning and repairs from 29th August to 8th October.

Mr. E. A. S. Brooks won the Scratch Medal at the Summer Meeting of the London Solicitors' Golfing Society, which was held on the course of the Addington Club on 14th June. A handicap event was won by Mr. P. A. Sandford, and Mr. J. A. Attenborough and Mr. A. Carter won a bogey foursomes competition.

A conference of Italian and German jurists opened last Tuesday in Rome to compare the legislation which has been devised in the two countries to give effect to the idea of the totalitarian state, and to enable the men responsible for drafting the laws in each country to profit by the experience gained in the other.

In the House of Commons last Wednesday the Prime Minister announced the Government's decision to recommend the appointment of a Royal Commission to inquire into the working of the present system of workmen's compensation law and to give authoritative advice as to any changes which may be desirable.

In the Divorce Court recently, a husband petitioner, who was married to the wife respondent in September, 1895, sought the dissolution of the marriage on the ground of his wife's desertion. It was stated that he had been deserted by the respondent forty-two years ago. The President granted the petitioner, who was seventy-three years of age, a decree *nisi* of divorce.

The Departmental Committee on the qualifications, recruitment, training and promotion of local government officers, of which the late Sir Henry Hadow was chairman, recommended that one of the principal needs of the local government service was a standing advisory body to deal with questions affecting the staff of local authorities. A committee to perform these functions has been set up, with Lord Phillimore as chairman, by associations of local authorities, the Standing Joint Committee of Metropolitan Boroughs and the London County Council. The committee is now engaged in an investigation of the subject of recruitment, and has issued a questionnaire to local authorities with the object of obtaining information on the existing practice of authorities in recruiting new entrants into certain grades of the local government service.

In a written Parliamentary reply to Mr. Keeling, who asked if the London Passenger Transport Board exempted itself from liability at common law in respect of accidents to persons travelling with cheap tickets, Mr. Burgin, Minister of Transport, states: The London Passenger Transport Board has informed me that it will not in future, in respect of any of its services, seek to exempt itself by special contract from its liability at common law in respect of injury—fatal or otherwise—to passengers (other than those holding privilege tickets or free passes) when travelling in the Board's vehicles or whilst in the act of entering or alighting from such vehicles. Where in the case of passengers holding workmen's tickets who may be injured in such circumstances the Board's liability at common law is limited by special Act, the Board will not plead such limitation. I am glad to say that the Board has decided to apply this concession to accidents which occurred on or after 1st May 1938.

Court Papers.

Supreme Court of Judicature.

Date.	Emergency Rota.	Appeal Court No. I.	Group II. Mr. Justice Luxmoore. Witness Part II.	Group II. Mr. Justice Farwell. Witness Part I.
	Mr.	Mr.	Mr.	Mr.
June 27	Andrews	Blaker	*Andrews	*Hicks Beach
„ 28	Jones	More	*Jones	*Andrews
„ 29	Ritchie	Hicks Beach	*Ritchie	*Jones
„ 30	Blaker	Andrews	*Blaker	Ritchie
July 1	More	Jones	*More	Blaker
„ 2	Hicks Beach	Ritchie	Hicks Beach	More
	Group II. Mr. Justice Morton. Non-Witness	Mr. Justice Bennett. Witness Part II.	Group I. Mr. Justice Crossman. Non-Witness	Mr. Justice Simonds. Witness Part I.
	Mr.	Mr.	Mr.	Mr.
June 27	Jones	Blaker	More	*Ritchie
„ 28	Ritchie	More	Hicks Beach	*Blaker
„ 29	Blaker	Hicks Beach	Andrews	*More
„ 30	More	Andrews	Jones	*Hicks Beach
July 1	Hicks Beach	Jones	Ritchie	*Andrews
„ 2	Andrews	Ritchie	Blaker	Jones

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 7th July 1938.

	Div. Months.	Middle Price 22 June 1938.	Flat Interest Yield.	‡ Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	111	3 12 1	3 4 4
Consols 2½%	JAJO	74½	3 7 1	—
War Loan 3½% 1952 or after ...	JD	101¾	3 8 10	3 6 10
Funding 4% Loan 1960-90	MN	113	3 10 10	3 3 4
Funding 3% Loan 1959-69	AO	97½	3 1 6	3 2 6
Funding 2¾% Loan 1952-57	JD	96½	2 17 0	2 19 10
Funding 2½% Loan 1956-61	AO	90½	2 15 3	3 1 8
Victory 4% Loan Av. life 22 years ...	MS	111½	3 11 9	3 5 2
Conversion 5% Loan 1944-64 ...	MN	114	4 7 9	2 4 10
Conversion 4½% Loan 1940-44 ..	JJ	104½	4 6 1	2 5 0
Conversion 3½% Loan 1961 or after	AO	102¼	3 8 6	3 7 2
Conversion 3% Loan 1948-53 ...	MS	101½	2 19 1	2 16 4
Conversion 2½% Loan 1944-49 ...	AO	99	2 10 6	2 12 2
Local Loans 3% Stock 1912 or after	JAJO	87½	3 8 7	—
Bank Stock	AO	342½	3 10 0	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	82½	3 6 8	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	88½	3 7 10	—
India 4½% 1950-55	MN	112½	4 0 0	3 4 6
India 3½% 1931 or after	JAJO	92½	3 15 8	—
India 3% 1948 or after	JAJO	79	3 15 11	—
Sudan 4½% 1939-73 Av. life 27 years	FA	109½	4 2 2	3 18 5
Sudan 4% 1974 Red. in part after 1950	MN	109½	3 13 1	3 0 10
Tanganyika 4% Guaranteed 1951-71	FA	110	3 12 9	3 1 1
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	106	4 4 11	2 12 11
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	93	2 13 9	3 0 2
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	102	3 18 5	3 16 8
Australia (Commonw'th) 3% 1955-58	AO	88	3 8 2	3 17 6
*Canada 4% 1953-58	MS	109	3 13 5	3 4 7
*Natal 3% 1929-49	JJ	100	3 0 0	3 0 0
New South Wales 3½% 1930-50 ...	JJ	96	3 12 11	3 18 6
New Zealand 3% 1945	AO	92	3 5 3	4 7 1
Nigeria 4% 1963	AO	108	3 14 1	3 10 3
Queensland 3½% 1950-70	JJ	95	3 13 8	3 15 5
*South Africa 3½% 1953-73	JD	102	3 8 8	3 6 7
Victoria 3½% 1929-49	AO	97	3 12 2	3 16 10
CORPORATION STOCKS				
Birmingham 3% 1947 or after ...	JJ	86	3 9 9	—
Croydon 3% 1940-60	AO	96	3 2 6	3 5 2
*Essex County 3½% 1952-72 ...	JD	103	3 8 0	3 4 10
Leeds 3% 1927 or after	JJ	85	3 10 7	—
Liverpool 3½% Redeemable by agreement with holders or by purchase...	JAJO	99	3 10 8	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	71½	3 9 11	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	86	3 9 9	—
Manchester 3% 1941 or after ...	FA	86	3 9 9	—
Metropolitan Consd. 2½% 1920-49 ...	MJSD	99	2 10 6	2 12 2
Metropolitan Water Board 3% "A" 1963-2003	AO	88	3 8 2	3 9 4
Do. do. 3% "B" 1934-2003 ...	MS	89½	3 7 0	3 8 0
Do. do. 3% "E" 1953-73 ...	JJ	96	3 2 6	3 3 10
*Middlesex County Council 4% 1952-72	MN	107	3 14 9	3 7 3
* Do. do. 4½% 1950-70	MN	112	4 0 4	3 5 5
Nottingham 3% Irredeemable ...	MN	86	3 9 9	—
Sheffield Corp. 3½% 1968	JJ	101½	3 9 0	3 8 5
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture ...	JJ	106xd	3 15 6	—
Gt. Western Rly. 4½% Debenture ...	JJ	115½xd	3 17 11	—
Gt. Western Rly. 5% Debenture ...	JJ	127xd	3 18 9	—
Gt. Western Rly. 5% Rent Charge ...	FA	125½xd	3 19 8	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	124½	4 0 4	—
Gt. Western Rly. 5% Preference ...	MA	108½	4 12 2	—
Southern Rly. 4% Debenture ...	JJ	104	3 16 11	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	106½	3 15 1	3 11 9
Southern Rly. 5% Guaranteed ...	MA	125½	3 19 8	—
Southern Rly. 5% Preference ...	MA	104½	4 15 8	—

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.